(27,638)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 314.

WILLIAM R. BEGG AND ARTHUR C. HUME, RECEIVERS OF THE MANHATTAN AND QUEENS TRACTION CORPORATION, APPELLANTS,

vs.

THE CITY OF NEW YORK ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

Law & Butterfield (Inc.), Printers, Washington, D. C., September 1, 1920.

Original.

United States Circuit Court of Appeals for the Second Circuit.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR CARTER HUME, Receivers of Defendant, Appellees, Relative to the Franchise and Property of the Defendant, THE CITY OF NEW YORK, Appellant.

TRANSCRIPT OF RECORD.

Volume I.

[Stamped:] United States Circuit Court of Appeals, Second Circuit. Filed Jul. 1, 1919. William Parkin, Clerk.

1 *Preliminary Objections to the Hearing of This Motion.*

District Court of the United States for the Eastern District of New York.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR C. HUME, as Receivers of the Defendant, Relative to the Franchise and Property of the Defendant.

The City of New York hereby files the following preliminary objections to the hearing of the above entitled motion by this Court, to wit:

I. The District Court of the United States is without jurisdiction
2 to stay or enjoin the passage of the proposed resolution revoking or purporting to revoke the franchise of the Manhattan and Queens Traction Corporation, mentioned in paragraphs "XXI" and "XXII" of the said petition, for the reason that in passing or attempting to pass such a resolution, the Board of Estimate and Apportionment of The City of New York would be acting in a legislative capacity and any such act of revocation would be a legis-

lative act with which this Court, as a part of the judicial branch of the Government of the United States, would have no right to interfere.

II. The District Court of the United States is without jurisdiction to stay and enjoin the passage of the proposed resolution of the Board of Estimate and Apportionment in the summary manner attempted in the above entitled proceedings and in the proceedings brought in and entitled in the original action in which the receivers were appointed to preserve the property of the Manhattan and Queens Traction Corporation, on the ground that such a stay or an injunction could only be granted in a plenary suit commenced in equity where the facts necessary to bring the complainants or petitioners within the jurisdiction of the United States District Court, appear in the complaint.

III. The petition of the receivers herein does not show the necessary jurisdictional facts permitting them to sue in the District Court of the United States and their sole remedy is in an action in equity for an injunction brought in the State court.

IV. The District Court of the United States is without juris-
3 diction to grant an injunction herein for the reason that even if the Board of Estimate and Apportionment passed the resolution mentioned in paragraphs "XXI" and "XXII" of the petition, it would be ineffectual to impair the rights or franchise of the Manhattan and Queens Traction Corporation in the event that it was made to appear that the title to the "streets and avenues involved," mentioned in petition, were not in the City of New York and that the same were not "regulated and graded" and for this reason a court of equity has not the power to stay the passage of said proposed resolution, and that the proper remedy of the Manhattan and Queens Traction Corporation, in case of any interference by The City of New York with their property after the passage of such resolution would be a suit in equity to restrain such interference.

Dated, New York, March 13, 1918.

WILLIAM P. BURR,
Corporation Counsel.

Office and Post Office Address, Municipal Building, Borough of Manhattan, New York City.

4 *Order to Show Cause, Dated, Filed and Entered December 19, 1917.*

At a Stated Term of the United States District Court for the Eastern District of New York, Held at the Court House, in the Borough of Brooklyn, New York, on Dec. 19th, 1917.

Present: Hon. Thomas I. Chatfield, U. S. D. J.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR C. HUME, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

It appearing to my satisfaction this day by the petition herein of William R. Begg and Arthur C. Hume, Receivers of the Manhattan and Queens Traction Corporation, verified the 19th day of December, 1917, that in order to protect the franchises and property now in the hands of the said Receivers from threatened action by the City of New York and by the Board of Estimate and Apportionment of the City of New York, and to prevent irreparable damage to the
5 said franchises and property and to the rights of the Manhattan and Queens Traction Corporation, and to the creditors thereof, it is necessary for this court to enjoin and restrain, until further order of this Court, the City of New York, the Board of Estimate and Apportionment of the City of New York, and all persons hereinafter mentioned in this order, from doing any act or thing hereinafter in this order enjoined, and from taking or attempting to take the franchises of the Manhattan and Queens Traction Corporation, or the property thereof, which is now in the hands of the Receivers appointed by this court, or interfering with the same, or the possession or control thereof by the said Receivers, and it appearing that The City of New York, acting through its Board of Estimate and Apportionment, threatens to take such action, and that such action is reasonably to be apprehended.

Now, on motion of William R. Begg and Arthur C. Hume, Receivers of the Manhattan and Queens Traction Corporation, it is

Ordered and decreed, that until the further order of this court, John Purroy Mitchel, Mayor of the City of New York, and Chairman of the Board of Estimate and Apportionment; William A. Prendergast, Comptroller; Frank L. Dowling, President of the Board of Aldermen; Marcus M. Marks, President of the Borough of Manhattan; Lewis H. Pounds, President of the Borough of Brooklyn;

Douglas Mathewson, President of the Borough of Bronx; Maurice E. Connelly, President of the Borough of Queens; Calvin D. Van Name, President of the Borough of Richmond; Harry P. Nichols,
6 Engineer, Chief of the Bureau of Franchises; Joseph Haag, Secretary of the Board of Estimate and Apportionment; all of the City of New York, and the Board of Estimate and Apportionment of the City of New York, as a body, and The City of New York, and the successor and successors in office of all of the foregoing, and all public officials, officers, deputies, agents, employes, servants, engineers and attorneys of The City of New York, of the Board of Estimate and Apportionment of the City of New York, and of the respective Boroughs of the City of New York, and all public officials, officers, deputies, agents, employes, servants, engineers and attorneys of the Borough of Queens of the City of New York, and of all of the departments in said Borough, the Chief of the Bureau of Franchises, the Bureau of Franchises, and all deputies, assistants and employes of the said Bureau of Franchises of the City of New York, and all persons, firms, associations and corporations which may be employed or retained by any of the foregoing for the purpose of doing any of the things hereinafter enjoined, and all persons to whom notice of this order shall come, be, and they hereby are, and each of them hereby is, until further order of this court, enjoined and restrained from moving, considering, voting on, amending, adopting, or in any manner passing a resolution of any kind or in any form whatsoever, on December 21st, 1917, or at any time thereafter, until further order of this court, declaring forfeited, forfeiting or purporting to forfeit, impairing and/or affecting the franchise contract of the Manhattan and Queens Traction Corporation, dated October 29th, 1912, and the amendments thereof, dated respectively July 21st, 1913, and
7 January 21st, 1916, and/or the franchises, rights and privileges of the Manhattan and Queens Traction Corporation to operate a street surface electric railway upon its route in the City of New York, and from declaring forfeited, forfeiting or purporting to forfeit, and/or to take or otherwise interfere with the railway, equipment, property and assets of the Manhattan and Queens Traction Corporation now in the hands of the Receivers of this court, and/or declaring the same, or purporting to declare the same, in any manner or form, the property of The City of New York, and from taking any action whatsoever contemplated or threatened by the resolution purported to have been adopted by the said Board of Estimate and Apportionment at its meeting on October 19th, 1917, copy of which is annexed to the petition, and from calling the roll of the Board of Estimate and Apportionment, on said motion, from printing, typewriting, or otherwise preparing, such a resolution in any form, and from doing any acts or things and taking any steps whatsoever on December 21st, 1917, or thereafter, until further order of this court, looking to, purporting to, or for the purpose or preliminary to a forfeiture of, taking or interfering with in any manner said franchise of the Manhattan and Queens Traction Corporation and its amendments, and of the franchises, rights, property and assets of the said Traction Corporation now in the hands of the Receivers of this court,

and from taking, declaring forfeited or purporting to forfeit any of the property, assets or bonds of the said Manhattan and Queens Traction Corporation now on deposit with The City of New York, or from affixing any fine, penalty or damages, whether liquidated or
8 otherwise, upon or against the said Traction Corporation and its property, and from taking any steps or doing any acts whatsoever for the purpose of depriving or purporting to deprive the said Manhattan and Queens Traction Corporation and the Receivers of this court from exercising and operating the franchises of the said corporation and its railway in the streets of the City of New York, and from taking any steps for the purpose of depriving or taking any of the said corporation's property in the streets of the City of New York now in the possession of the Receivers of this court; all until further order of this court; and it is

Further ordered, that the Receivers, by this application shall not be deemed to have accepted the terms of said franchise but may have a reasonable time and until further order of this court to determine what course they will recommend should be taken relative to the franchise and franchise rights of the Manhattan and Queens Traction Corporation; and let the City of New York serve on the Receivers and file in this court an answer to this petition on or before the 24th day of December, 1917, and show cause before this court, at a stated term thereof, to be held in the Post-Office Building, at Brooklyn, in the County of Kings, on the 26th day of December, 1917, at two o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, why this restraining order and injunction should not be continued during the time the Receivers of this court are in possession and control of the franchises, rights,
9 property and assets of the Manhattan and Queens Traction Corporation, and until further order of this court; and it is

Further ordered, that service of this order and the petition upon which it is granted (except the franchise contract of October 29th, 1912, and its amendments, which are already on file with the City, and the preliminary report of the Receivers, filed in this Court, December 7th, 1917), upon The City of New York, as provided by law, on or before the 21st day of December, 1917, at 10:30 o'clock in the forenoon of December 21st, 1917, shall be sufficient; and it is

Further ordered, that the Receivers have leave to serve such further and additional evidence, affidavits, papers and documents in support of this injunction order as they deem should be submitted to this court, at the time the City is ordered to show cause as above directed.

THOMAS I. CHATFIELD,
United States District Judge.

The City of New York admits that a copy of this order was duly served on its Mayor and on the members of its Board of Estimate and Apportionment.

10 *Petition of the Receivers, Dated, Filed and Entered December 19, 1917.*

In the District Court of the United States for the Eastern District of New York.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR C. HUME, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

To the Honorable the Judge of the District Court of the United States for the Eastern District of New York:

The petition of William R. Begg and Arthur C. Hume, Receivers of the above named defendant, Manhattan and Queens Traction Corporation, respectfully shows as follows upon information and belief:

The main cause is a judgment creditor's suit instituted by the plaintiff for the appointment of Receivers to administer the
11 franchises, railway, property and assets of the defendant. For the contents of the bill of complaint, and the answer of the defendant to the said bill, reference is made to the said bill and answer of record in this court in this cause, which bill and answer are herewith made a part of this petition. By order of this court, duly filed and entered in said cause on the 15th day of November, 1917, your petitioners were duly appointed Receivers of the defendant, Manhattan and Queens Traction Corporation, and of its franchises, property and assets, with the powers and duties prescribed in said order, for the precise terms of which reference is made to the original order of record in this cause. Your petitioners have duly qualified as Receivers, as provided for in said order, and have entered into possession of the property of the defendant, and are now operating its railway in accordance with the said order. On December 7th, 1917, your petitioners filed a preliminary report of the financial condition of the defendant, as shown by its books November 15th, 1917, which report also contained a list of creditors as of that date, which report is made a part of this petition.

Your petitioners, having made an investigation of the defendant's affairs, find the following facts and situation to exist, which necessitates this petition and the relief asked for herein:

I. That the defendant, Manhattan and Queens Traction Corporation, is a railroad corporation, having been duly created under the

railroad law of the State of New York, on the 4th day of November, 1912, for the purpose of building, maintaining and operating
12 a street surface electric railway over, upon and along the Queensboro Bridge and the approaches thereof, and over, upon and along Thomson Avenue, Hoffman Boulevard, and other streets and avenues in the Borough of Queens, from the Manhattan terminal of said Bridge to the boundary line between the City of New York and the County of Nassau, at Central Avenue.

II. That heretofore and on or about the 29th day of October, 1912, The City of New York entered into a franchise contract with the South Shore Traction Company, a New York railroad corporation, which franchise contract was duly authorized by the Board of Estimate and Apportionment on July 15th, 1912, and approved by the Mayor on July 16th, 1912; that on or about the 21st day of November, 1912, said franchise contract, and all of the other property and assets of the said South Shore Traction Company, were in the hands of Receivers appointed by order of the United States Circuit Court for the Eastern District of New York, dated December 30th, 1910; that on or about November 21st, 1912, the Board of Estimate and Apportionment of the City of New York duly adopted a resolution, which was approved by the Mayor on November 22d, 1912, whereby said Board granted its consent to the South Shore Traction Company, and to its Receivers, to sell, assign, transfer and set over said franchise contract, dated October 29th, 1912, and all of the rights and privileges granted thereby, to the Manhattan and Queens Traction Corporation, and that on December 3d, 1912, the Public Service Commission of the State of New York for the First District granted the Manhattan and Queens Traction Cor-
13 poration a certificate of public convenience and a necessity, and its permission to the assignment of said franchise, and gave its approval to the exercise of the rights to be so assigned.

III. That thereafter, and on or about the 27th day of December, 1912, in pursuance of said permission of the said Board of Estimate and Apportionment and the said Public Service Commission, the South Shore Traction Company and its Receivers duly assigned, transferred, set over and delivered the said franchise contract, dated October 29th, 1912, and all of the rights and privileges granted thereby, and all of the property and assets of said South Shore Traction Company within the City of New York, to the Manhattan and Queens Traction Corporation, which sale, assignment, transfer and delivery was duly authorized and approved by an order of the District Court of the United States for the Eastern District of New York, dated October 30th, 1912.

IV. That heretofore, and on or about the 21st day of July 1913, the said franchise contract dated October 29th, 1912, was duly amended by a contract duly authorized by the Board of Estimate and Apportionment, and approved by the Mayor, July 3d, 1913; and on or about the 21st day of January, 1916, the said franchise

contract, dated October 29th, 1912, was again duly amended by a contract duly authorized by the Board of Estimate and Apportionment on December 17th, 1915, and approved by the Mayor on December 18th, 1915. Copies of the said franchise contract and its amendments are annexed to this petition and made a part hereof.

14 V. That in reliance upon and in pursuance of and under said franchise contract and its aforesaid amendments, there has been duly constructed, equipped and put in operation a double-track street surface electric railway between the Long Island Plaza of the Queensboro Bridge at Jackson Avenue, upon, along and over Thomson Avenue, Hoffman Boulevard and other streets and avenues in the Borough of Queens, to the intersection of Sutphin Road (Guilford Street) and Lambertville Avenue (Pacific Street); the Manhattan and Queens Traction Corporation was operating the same between said points when your petitioners were appointed Receivers, in addition to operating a bridge local service from the Manhattan terminal of the Queensboro Bridge to the said Jackson Avenue in Long Island City, which right to operate said bridge local service was and is granted to the Manhattan and Queens Traction Corporation in the said franchise contract of October 29th, 1912.

VI. That pursuant to the said franchise contract, and the said amendments thereof, the Manhattan and Queens Traction Corporation was required to complete and put in operation its railway to the intersection of Sutphin Road and Lambertville Avenue on or before May 1st, 1916; that the Manhattan and Queens Traction Corporation duly completed and put in operation its said street surface railway to the intersection of Sutphin Road and Lambertville Avenue, in the Borough of Queens, on the 26th day of April, 1916, and since that day its road has been in continuous operation from the Manhattan terminal of the Queensboro Bridge to the said intersection. Due proof of this construction and operation was
15 submitted to the Board of Estimate and Apportionment on or about May 5th, 1916, and it was duly accepted by said Board.

VII. That said franchise, in the amendment dated January 21st, 1916, provides, as to the remainder of said railway, at page five of said amendment, as follows:

"and the remainder of its said railway between said intersection of Sutphin Road (Guilford Street) and Lambertville Avenue (Pacific Street) and the City Line at Central Avenue within such time or times as may be directed by resolution of the Board upon recommendation of the President of the Borough, provided that title to the streets involved has been vested in the City and that said streets have been regulated and graded."

VIII. That the route of the Manhattan and Queens Traction Corporation's railway beyond the intersection of Sutphin Road and Lambertville Avenue, in the Borough of Queens, is as follows:

Upon and along Lambertville Avenue (Pacific Street) to Spangler Street (Vine Street), upon and along Spangler Street to Brinkerhoff Avenue, upon and along Brinkerhoff Avenue to Smith Street (Woodland Avenue), upon and along Smith Street to Ulster Avenue (Tremont Street), upon and along Ulster Avenue to Westchester Avenue, upon and along Westchester Avenue to 117th Avenue (or Central Avenue) to Dearborn Avenue (or Central Avenue), and upon and along Dearborn Avenue (or Central Avenue) to the City line at the County of Nassau.

16 IX. That Maurice E. Connelly, President of the Borough of Queens of the City of New York, in a communication to the Board of Estimate and Apportionment, dated January 11th, 1917, and presented to the Board on January 26th, 1917, when it was deferred until February 2d, 1917, when it was again presented to the Board of Estimate and Apportionment, requested the Board to adopt a resolution requiring the Traction Corporation to complete and put in operation that portion of its railway between the intersection of Sutphin Road and Lambertville Avenue and Springfield Avenue within four (4) months, and to begin work within thirty (30) days; that on February 2d, 1917, an amendment to said resolution was offered, providing that such work commence on or before March 4th, 1917, and to be completed and put in operation on or before August 2d, 1917. The Traction Corporation appeared and opposed such resolution, the resolution failed of adoption, and the matter was ordered on the calendar of the Board of Estimate and Apportionment for February 9th, 1917. On February 9th, 1917, at a meeting of the Board, such resolution was again introduced and the Traction Corporation appeared and protested against its passage, on the ground, among others, that title to the streets involved had not been vested in the City, and that such streets had not been regulated and graded as provided by said franchise contract and amendments, but, nevertheless, said resolution was adopted by ten (10) votes.

17 X. That on the 9th day of February, 1917, the time the said resolution was adopted by the Board of Estimate and Apportionment, title was not vested in the City to all of the said streets involved between the intersection of Sutphin Road and Lambertville Avenue and the intersection of Central Avenue and Springfield Road, in the Borough of Queens, and that such resolution, passed by the Board of Estimate and Apportionment, was void because it purported to compel the Traction Corporation to make an extension of its road before it was required to do so by its franchise. On February 9th, 1917, the acting Borough President of Queens admitted that title to certain of the streets involved had not been vested in the City since he offered a resolution to vest title to certain parts of Ulster Avenue, Westchester Avenue, 117th Avenue and Dearborn Avenue in the City, which resolution was lost. (See minutes of Board of Estimate for that date.)

XI. That at the meeting of the Board of Estimate and Apportion
ment, held on February 16th, 1917, the said matter was agai
brought before the Board by the President of the Borough of Queens
although it did not appear upon the regular calendar of the Board o
Estimate and Apportionment for February 16th, 1917, nor did th
Manhattan and Queens Traction Corporation have any notice wha
soever that it would be presented at that time; that the President o
the Borough of Queens stated to said Board on February 16th, 1917
"I would like to ask consent of the Board to re-introduce a resolutio
passed last week, which I thought might not be effective, having bee
passed before the vesting of the title," and the President then move
that the resolution adopted February 9th, 1917, directing th
18 Manhattan and Queens Traction Corporation to commence
said extension work within thirty (30) days and complet
construction of its railway to Central Avenue and Springfield Roa
within six (6) months, be rescinded, which motion was adopted
that at the same meeting of the Board of Estimate and Apportion
ment a resolution was adopted vesting title in The City of New Yor
to certain damage- parcels of certain of the said streets involved.

XII. That at said meeting of the Board of Estimate and Appor
tionment on February 16th, 1917, without the matter appearing o
the calendar of the said Board, or without the Manhattan and Queens
Traction Corporation having any notice of said proposed action
whatsoever, or having an opportunity to be heard, the President o
the Borough of Queens offered, and there was adopted, a resolution
which, without the preamble, is as follows:

"Resolved, That, pursuant to said Section 3, Seventh, of said con-
tract of October 29th, 1912, as amended by said contract of January
21st, 1916, the Manhattan and Queens Traction Corporation be, and
it hereby is, directed to commence construction of that portion of
its street surface railway authorized by said contract of October 29th,
1912, as amended by said contract of July 21st, 1913, from the inter-
section of Sutphin Road and Lambertville Avenue to the intersection
of Central Avenue and Springfield Road, within thirty (30) days,
and to complete and put in operation said portion of its street sur-
face railway within six (6) months from the date of the ap-
19 proval of this resolution by the Mayor."

That the above resolution was approved by the Mayor on Feb-
ruary 23d, 1917, and in accordance with its terms it purported to
require the Manhattan and Queens Traction Corporation to complete
and put in operation said portion of its railway, as therein mentioned,
on or before the 23d day of August, 1917. A copy of said resolution
is annexed to this petition, marked "A 1."

XIII. Upon information and belief, that title to all portions of
the streets involved in said extension was not vested in the City at
the time of the passage of the said resolution, nor is title now vested
in the City to all portions of said streets; neither were all of the
said streets regulated and graded to their legal grade and full width

at the time of the passage of the said resolution, nor are they now so regulated and graded; that title to the right-of-way of the Long Island Railroad Company, upon which are its tracks, and which crosses Lambertville Avenue at the grade thereof near Carlisle Street, is not vested in the City; that said right-of-way is fenced in on each side where it crosses Lambertville Avenue, and Lambertville Avenue is not physically open across said right-of-way for vehicular traffic, and that said Lambertville Avenue is not graded to its proper legal grade at this point, but only to a temporary grade, and when Lambertville Avenue shall be legally and physically opened and graded, it will pass under the said tracks of the Long Island Railroad Company, as set forth in an order of the Public Service Commission of the First District for the State of New York, dated
20 November 9th, 1912, in Case No. 1567; and that title to the right-of-way of the Long Island Railroad, where its tracks cross Westchester Avenue (Central Avenue) at grade, near Montauk Avenue, in the Borough of Queens, is not vested in the City of New York. That the sources of your petitioners' information and the grounds of their belief as to the foregoing allegations are a copy of a resolution adopted by the Board of Estimate and Apportionment on December 10th, 1915, copy of which is annexed to this petition, made a part hereof, and marked "A," which excepts the right-of-way of the Long Island Railroad; a resolution adopted by said Board on December 10th, 1915, a copy of which is annexed to this petition, made a part hereof, and marked "B," as to the temporary grade of Lambertville Avenue; the aforesaid order of the Public Service Commission, dated November 9th, 1912; damage map dated May 18th, 1916, relative to Ulster Avenue, Westchester Avenue, etc., in the Fourth Ward of the Borough of Queens, the damage parcel vested not taking in said Long Island Railroad right-of-way near Montauk Avenue, and resolution of the Board of Estimate and Apportionment, relative to Ulster Avenue, etc., adopted February 16th, 1917.

XIV. Upon information and belief, that Central Avenue, composed of Ulster Avenue, Westchester Avenue, 117th Avenue and Dearborn Avenue, has title vested in the City only to the traveled roadway, and not to the full legal width of the Street; that title is not vested in the City, or even in the traveled roadway between Springfield Road and the City line, and that a portion of
21 Westchester Avenue occupied by the right-of-way of the Long Island Railroad tracks, near Montauk Avenue, is not vested in the City; that no grading work has been done on Central Avenue between Merrick Road and Springfield Road, except the laying of an asphalt concrete pavement, about sixteen to twenty feet wide, the old lines of Central Avenue being dedicated to public use; that there is a line of poles on each side of the said asphalt line in Central Avenue, which poles are approximately thirty-three feet apart, and about six feet from the edge of the said asphalt, which pole lines would interfere with the construction of a railroad line on Central Avenue as it now exists, unless said trolley line were

constructed in said asphalt roadway. That the sources of your petitioners' information and the grounds of their belief as to the foregoing are a report dated February 14th, 1917, by the Chief Engineer of the Board of Estimate and Apportionment; the said resolution of the Board of Estimate vesting title to certain portions of Ulster Avenue, Westchester Avenue and 117th Avenue, adopted February 16th, 1917; a report by the Engineer of Highways of the Borough of Queens, dated February 19th, 1917, and a report of the Engineer of Maintenance of Ways of the Traction Corporation, dated February 9th, 1917.

XV. For the reasons that the said resolution of the said Board of Estimate, adopted February 16th, 1917, which required the Traction Corporation to complete an extension to Central Avenue and Springfield Road within six (6) months, was adopted February 16th, without giving the Traction Corporation an opportunity
22 to be heard thereon, since the former resolution to the same effect was void, the fact that said resolution purports to require the Traction Corporation to make said extension when title to all portions of the streets involved has not been vested in the City, and all portions of the said streets have not been regulated and graded to their proper legal width, which would be, in effect, amending the said franchise by resolution of the Board, and not in accordance with the Charter of the City of New York, your petitioners respectfully submit that said resolution passed February 16th, 1917, by the said Board of Estimate is void.

XVI. That the said franchise contract of the Traction Corporation prohibits it from operating its street surface railway across any railway or railroad other than street surface railways encountered in the route at the grade thereof; that the Long Island Railroad, where it crosses Lambertville Avenue and where it crosses Central Avenue, is not a street surface railway, and the Traction Corporation has not acquired the legal right to cross said rights-of-way at said points at grade, or otherwise, and crossing of the said tracks of the Long Island Railroad at such points would involve the construction of overhead trestles.

XVII. That the Manhattan and Queens Traction Corporation did certain things prior to the expiration of thirty (30) days from February 23d, 1917, such as the ordering of certain materials, the making of certain surveys and the procuring of consents in writing of owners of one-half in value of the property bounded on Lambertville Avenue and certain other streets and avenues involved
23 in said extension, and filed said written property owners' consents for Lambertville Avenue with the Bureau of Franchises on March 26th, 1917, which consents were accepted by the Board of Estimate and Apportionment on April 20th, 1917.

XVIII. That up to the 15th day of November, 1917, the Traction Corporation had duly performed all of the terms and conditions of the said franchise contract of October 29th, 1912, and its amendments, on its part to be performed, but it did not construct and

put in operation an extension of its road from the intersection of Lambertville Avenue and Sutphin Road to Central Avenue and Springfield Road, as the said resolution of the Board of Estimate and Apportionment, adopted February 16th, 1917, purported to require it to do.

XIX. That an excavation has been made in Lambertville Avenue in which ties and rails have been laid between Sutphin Road and Spangler Street, a distance of about three thousand feet, and steel poles have been erected on Lambertville Avenue between said points; that it appears from the records of the Traction Corporation that it was physically impossible for it to procure the steel rails and certain other material for the purpose of building the extension purported to be required by the said resolution of February 16th, 1917, and for the purpose of putting said extension in operation within six (6) months from February 23d, 1917, or on or before August 23d, 1917. One example will be sufficient to show this court such impossibility: That on April 29th, 1916, the said Traction
24 Corporation ordered from the Lorain Steel Company six hundred tons of steel rails, with necessary splice bars, tie rods and bolts. Owing to the exceptional demand of the United States Government, and its Allies, for steel, due to the war, the Steel Company was unable to deliver this material to the Manhattan and Queens Traction Corporation, and the same was not delivered to it until about the middle of September, 1917, when part thereof was delivered. That part thereof was not delivered until November, 1917. It will be noted that the order for these rails was placed in April, 1916, whereas, the President of the Borough of Queens did not request the Board of Estimate and Apportionment to take action in this matter until January of 1917, and at that time the President of the Borough of Queens had no authority under the said franchise contract and its amendments to request the Manhattan and Queens Traction Corporation to make said extension, inasmuch as title to certain parts of certain of the streets involved in said extension was not then vested in the City of New York, and was not vested in the City of New York until February 16th, 1917.

XX. That on August 18th, 1917, the Traction Corporation presented a petition to the Board of Estimate and Apportionment of the City of New York, setting forth that it had been impossible for it to comply with the resolution of the Board requiring such extension, passed February 16th, 1917, in which petition the Traction Corporation reserved its other rights in the premises, a copy of which petition is annexed to this petition, made a part hereof, and marked "C."

25 XXI. That said application of the Traction Corporation was presented to the Board of Estimate for consideration for the first time on October 19th, 1917 (the delay in bringing it on for hearing was not due in any respect to the Traction Corporation); that when said matter appeared on the calendar of the Board of Estimate on October 19th, 1917, it appeared with a proposed resolu-

tion providing for the service of a notice on the Traction Corporation that it was in default, and fixing November 9th as a day for hearing upon such default only; that thereafter the Traction Corporation presented another petition to the Board of Estimate, setting forth that it had no opportunity to be heard on October 19th, 1917, and asking that its former petition, filed August 18th, 1917, be placed upon the calendar for hearing. A copy of this second petition of the Traction Corporation, dated October 20th, 1917, is annexed to this petition, made a part hereof, and marked "D." That thereafter, and on October 26th, 1917, both matters were restored to the calendar of the Board of Estimate and Apportionment, and the 2d day of November fixed for consideration thereof; that on the 2d day of November, both matters were adjourned until November 9th, and again on November 9th adjourned to November 16th, and on November 16th adjourned to December 21st, 1917, for hearing. The order of this court appointing your petitioners as Receivers was delivered to the Board of Estimate and Apportionment on November 16th, 1917, and later a copy of said order was delivered to the Bureau of Franchises of the Board of Estimate and Apportion-
26 ment.

XXII. That on October 20th, 1917, a copy of a resolution adopted by the Board of Estimate on October 19th, 1917, was served on the Traction Corporation, wherein it was resolved, in substance, that the Traction Corporation show cause why a resolution declaring forfeited the contract dated October 29th, 1912, and the contracts dated July 21st, 1913, and January 21st, 1916, should not be adopted, and why such resolution should not provide that the railway constructed and in use by virtue of said contracts shall thereupon become the property of The City of New York without proceedings at law or in equity. A copy of such resolution which was served on the Traction Corporation is annexed to this petition, made a part hereof, and marked "E."

XXIII. That this matter, pursuant to said resolution, is on the calendar of the Board of Estimate and Apportionment for consideration on December 21st, 1917, and by said resolution The City of New York, through its said Board of Estimate and Apportionment, threatens to forfeit the said franchise of the Traction Corporation and to take all of its railway constructed and in use without any compensation whatsoever to the Traction Corporation, and without any proceedings of any kind at law or in equity.

XXIV. That the Traction Corporation, when placed in the hands of your petitioners, was efficiently operating a double-track street surface electric railway, from the Manhattan terminal of the Queensboro Bridge to a point beyond the Long Island Railroad Company's station in the Village of Jamaica, a distance of 10.4 miles, and operating a local service over the Queensboro Bridge and its
27 approaches. The Traction Corporation was using, with certain few exceptions, modern, part steel, side-entrance trolley

cars, and running its road at certain intervals night and day, and rendering efficient service as a common carrier to the public in the Borough of Queens and Manhattan. Said extension would cover about 3.3 miles.

XXV. That it would cost approximately three hundred thousand dollars ($300,000) to build the extension which the said resolution of February 16th, 1917, purports to require; that it was physically impossible for the Traction Corporation to comply with that resolution by August 23d, 1917, even though it had had the money with which to make said extension, or could procure the same, owing to the fact that it could not get the steel rails which it had ordered for that purpose. That the Traction Corporation did not have and has not now the funds with which to make said extension, and that in addition to the cost of this construction, which would be very excessive at this time, the project is not one which could or should be financed at this time when all construction work that will not help the prosecution of the war is being deferred.

XXVI. That the Traction Corporation, in March, 1913, applied to the Public Service Commission of the State of New York for the First District, for authority to issue one million five hundred thousand dollars ($1,500,000) par value of stock and one million five hundred thousand dollars ($1,500,000) par value of First Mortgage Five Per Cent. Bonds to pay for the acquisition of the franchise and property of the South Shore Traction Company and the con-
28 struction and equipment of its road from the Manhattan terminal of the Queensboro Bridge to Johnson Avenue, just beyond the Long Island Railroad Company's station in Jamaica. In February, 1914, the Commission authorized the Traction Corporation to issue its stock to the extent of seven hundred and sixty-five thousand dollars ($765,000) par value, but required such stock to be issued at par for money, and the proceeds applied to certain specific purposes. The Traction Corporation was not authorized by the Commission to issue any bonds, but the Commission intimated that they would permit the Traction Corporation to issue eight hundred and seven thousand dollars ($807,000) face value of bonds to be sold at eighty-five, but stated that in view of the fact that the evidence indicated that during the first three years of operation the earnings of the company will not be sufficient to enable it to pay interest on the bonds, such bonds should be income bonds for three years from and after their date. As the Traction Corporation was asking for securities for the purpose of constructing and equipping a new road into an undeveloped territory, the securities offered by the Commission were not issued by the Traction Corporation, as under the conditions imposed the same were considered not marketable by the corporation. The Traction Corporation, as appears by its books and records, has been required to issue demand and short-term promissory notes to finance itself. That on November 15th, 1917, as shown by its books, its current liabilities were one million six hundred seventy-six thousand one hundred eighty-nine and

82/100 dollars ($1,676,189.82), while its total liabilities, as
29 shown by its books, were two million one hundred ninety-six thousand nine hundred fifty-nine and 57/100 dollars ($2,196,959.57). To meet the current accounts, its books showed that its current assets amounted to only four thousand three hundred eight and 69/100 dollars ($4,308.69), and that its creditors would have to look principally to the railroad, its property, material and equipment for payment. Your petitioners respectfully refer this court to their preliminary financial report, filed and entered herein December 7th, 1917, which is made a part of this petition, and which sets forth the property of the Traction Corporation.

XXVII. That your petitioners find that the provisions of the said franchise contract under which the Traction Corporation constructed and operated its road, are very onerous. That the Traction Corporation carries passengers from the Manhattan terminal of the Queensboro Bridge to the Long Island station in Jamaica and beyond, a distance of over ten (10) miles, through a sparsely settled country for a five-cent fare. That owing to the construction of the elevated lines in Queens, in which the City of New York is interested, the Traction Corporation's gross revenue has been steadily decreasing since the said elevated roads were put in operation, owing to the fact that it has lost a great deal of the short-haul traffic which it formerly had from Manhattan to Long Island City and vicinity. Your petitioners are informed that the tracks of the Traction Corporation on Queens Boulevard in the Borough of Queens are only in
a temporary position, although the Traction Corporation has
30 paved between its rails and for two feet on each side thereof, as required by its franchise, and that when said Queens Boulevard is improved, as contemplated and planned by the City of New York, the City of New York claims that the Traction Corporation will be required to move its tracks from their present position on the Boulevard to a position under the said elevated structures where they parallel the boulevard, and beyond from their present position to another position in said boulevard, which will require, in addition to such removal, repaving, all of which it is estimated will cost approximately six hundred thousand dollars ($600,000).

XXVIII. That the Traction Corporation is required by its said franchise contract, among other payments to the City, to pay the City five per cent. (5%) of its gross annual receipts, which in no case shall be less than seven thousand dollars ($7,000), and which shall not be considered in the nature of a tax, so that the Traction Corporation is prohibited from deducting the same from its State franchise tax. The Traction Corporation, in addition, is required to pay an additional amount for the use of the Queensboro Bridge and its facilities.

XXIX. That the Traction Corporation, under the said franchise contract, in paragraph 11 of Section V thereof, is required to make a report to the Board of Estimate and Apportionment of certain things as therein required, as of September 30th, 1917, and also to file a report as to its revenue with the Comptroller of the City

of New York. On or about October 20th, 1917, the Traction Corporation submitted a report to the Board of Estimate and
31 Apportionment and to the Comptroller of the City of New York for the year ending September 30th, 1917; that on or about November 1st, 1917, the Traction Corporation paid to the Comptroller of the City of New York, as per the provisions of said franchise, for the percentage of the gross earnings for the year ending September 30th, 1917, and for the Bridge tolls for the year ending September 30th, 1917, and for the track and terminal privileges on the Queensboro Bridge for the year ending September 30th, 1917, the sum of seventeen thousand one hundred seventy-five and 44/100 dollars ($17,175.44), which was accepted by the City of New York. The Traction Corporation also paid to the City of New York, on or about November 1st, 1917, the sum of two hundred dollars ($200) for the privilege of certain crossovers and turnouts in the streets.

XXX. That certain of these taxes accrued after August 23d, 1917, and were accepted by the City thereafter. That on or about December 7th, 1917, the report of the Traction Corporation, made to the Board of Estimate and Apportionment for the year ending September 30th, 1917, was presented to the said Board of Estimate and Apportionment, and ordered filed. Copies of the vouchers and receipts of the above payments are annexed to this petition, made a part hereof, and marked "F" and "G." Your petitioners therefore respectfully submit that the City if it accepted payments under and pursuant to said franchise contract and its amendments, cannot claim any forfeiture thereof.

XXXI. That the threatened action of the City to forfeit
32 the franchise of the Traction Corporation and to take its railway, without compensation and without any suit at law or in equity, on the 21st day of December, 1917, is, your petitioners respectfully submit, inequitable and unjust to the Traction Corporation and to its creditors; that such threatened action is based upon a resolution, the validity of which is doubtful, if the same be not entirely void; that such threatened action is in violation of the said franchise contract and its amendments, even if the same is a valid agreement, in that title to all of the streets involved in said extension has not been vested in the City, and that the said streets have not been regulated and graded to their legal grade and proper width. That if the Traction Corporation is in default, it is in default only as to a resolution of the Board of Estimate and Apportionment, and not as to the provisions contained in the said franchise contract, and for that reason a forfeiture cannot be declared by the terms of the Thirteenth paragraph of the said franchise contract, at page twenty-nine. That the requirements of the said resolution of February 16th, 1917, could not be physically complied with by the Traction Corporation, and, therefore, to forfeit the franchise and railway of the Traction Corporation for failure to comply with said resolution would be unjust and unreasonable; that there is a grave question whether or not the State has not placed the determination

of the questions of extensions and new constructions of street surface railways within the State of New York and City of New York in the hands of the Public Service Commission, and taken the same away from the Board of Estimate and Apportionment of the
33 City of New York, therefore depriving the latter body of jurisdiction in the premises; that the said threatened action by the Board of Estimate and Apportionment is in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States, in that such threatened acts by the City, acting through its said Board of Estimate and Apportionment, will deprive the Manhattan and Queens Traction Corporation of its property without due process of law, and take its private property for public use without just compensation; that such threatened action is in violation of Article First, Sections VI and VII of the Constitution of the State of New York, in that said threatened acts will deprive the Traction Corporation of its property without due process of law, and take its private property for public use without just and proper compensation; that the provisions in said franchise contract providing for a forfeiture and the taking of the property and assets of the Traction Corporation without compensation and without suit at law or in equity are ultra vires of the City of New York, in that the Charter of the City of New York does not authorize the City of New York to provide in a franchise contract that the property of a railroad corporation shall be forfeited to the City without compensation for a mere breach of the said franchise contract prior to the termination thereof, and that the Charter of The City of New York does not give the City, through its Board of Estimate and Apportionment, the right to forfeit and take the property of a railroad corporation without compensation, or the right to forfeit said franchise and property, in any manner, that such action can only be taken by the State in an appropriate action, if at all, that the City has not
34 the right or power to enforce a fine, penalty, or to take said property from the creditors whom your petitioners represent; finally, that such threatened acts will produce irreparable injury to the Traction Corporation and to its creditors, and to the property in custody of your Receivers, and that the Traction Corporation and your petitioners have no adequate remedy at law in the premises to protect the said corporation and its creditors, its property and its franchises from said threatened acts.

XXXII. That the situation presented to your petitioners is one of difficulty, and if the City takes the action threatened, is one involving very serious consequences to the creditors of the Traction Corporation; that your petitioners are unable at the present time to determine just what course they ought to pursue relative to the said franchise contract; that your petitioners look upon the said franchise contract as an agreement relative to which they ought to have a reasonable time within which to determine what their course should be for the best interests of the Traction Corporation and its creditors. That under the circumstances disclosed, a restraining order is necessary, and, therefore, this matter is brought on by an order to show cause,

instead of by a motion on notice. That no previous application has been made for the relief asked for.

XXXIII. That the franchise contract of October 29th, 1912, and its amendments, are on file with the City of New York, Board
35 of Estimate and Apportionment, Bureau of Franchises, and with other bureaus of the City; therefore, your petitioners request that in serving these papers, service of the said franchise contract and its amendments be dispensed with, as well as the preliminary financial report of the Receivers, which was filed herein December 7th, 1917.

Wherefore, your petitioners respectfully pray for an order in the form annexed, and for such other and further direction and relief in the premises as the Court may deem just, proper and equitable.

Dated, New York, December 19th, 1917.

WILLIAM R. BEGG,
ARTHUR C. HUME,
Petitioners, Receivers of Manhattan and Queens Traction Corporation.

STATE OF NEW YORK,
County of Kings, ss:

Arthur C. Hume, being duly sworn, deposes and says:

That he is one of the petitioners mentioned and described in the foregoing petition as one of the Receivers of the Manhattan and Queens Traction Corporation; that he has read the said petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. That the sources of deponent's knowledge and grounds
36 of his belief are records, papers and documents of public record and statements made to him by his counsel.

ARTHUR C. HUME.

Sworn to and subscribed before me this 19th day of December, 1917.

(Sgd.) PERCY G. B. GILKES,
[Notarial Seal.] *Notary Public, Kings Co., N. Y.*

STATE OF NEW YORK,
County of Kings, ss:

Robert S. Sloan, one of the attorneys for the receivers, being duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge, except as to the matters which in the body thereof are stated to be alleged on information and belief, and that as to those matters he believes it to be true.

ROBERT S. SLOAN.

Sworn to and subscribed before me this 19th day of December, 1917.

(Sgd.) PERCY G. B. GILKES,
[Notarial Seal.] *Notary Public, Kings Co., N. Y.*

Report dated Feby. 19, 1917, referred to in foregoing petition is printed at page 138.

37 EXHIBIT A, ATTACHED TO THE FOREGOING PETITION.

A.

Board of Estimate and Apportionment, City of New York.

Whereas the Board of Estimate and Apportionment under resolutions adopted on May 1, 1913, December 4, 1913, and April 1, 1915, authorized a proceeding for acquiring title to Lambertville Avenue (Pacific Street and Packard Avenue) from Sutphin Road to Merrick Road, excepting the right-of-way of the Long Island Railroad, Borough of Queens, and

Whereas, Commissioners of Estimate and Assessment have been appointed by the Supreme Court in proceedings to acquire title to said street, and the oaths of said Commissioners of Estimate and Assessment were duly filed as required by law on the 10th day of March, 1915;

Resolved, that the Board of Estimate and Apportionment in pursuance of the provisions of the Greater New York Charter, as amended directs that upon the 18th day of December, 1915, the title in fee to Damage parcels No. 2 to 176, inclusive, excepting Damage parcels Nos. 5, 24, 25, 33, 94, 107, 115, 119 and 175, as indicated on the supplementary damage map in the proceeding for acquiring title to Lambertville Avenue (Pacific Street and Packard Avenue) from Sutphin Road to Merrick Road, excepting the right-of-way of the Long Island Railroad, in the Borough of Queens, City of New York, so required, shall be vested in the City of New York.

I hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Estimate and Apportionment at a meeting of said Board held on December 10, 1915.

J. HAAG,
Secretary.

10¢ Revenue Stamp Cancelled. 12/17/15. J. C. D.

38 EXHIBIT A-1, ATTACHED TO FOREGOING PETITION.

Approved Resolution No. 10.

A I.

Board of Estimate and Apportionment, the City of New York.

Commencement and completion of construction of the railway of the Manhattan and Queens Traction Corporation, from the intersection of Sutphin Road and Lambertville Avenue to the intersection of Central Avenue and Springfield Road, Borough of Queens.

See Minutes, January 26, 1917; February 2, 1917; February 9, 1917; February 16, 1917.

Whereas, By a contract dated October 29, 1912, the South Shore Traction Company was granted the right to construct, maintain and operate a street surface railway from the Manhattan approach to the Queensboro Bridge, upon, along and over said bridge, and its approaches to the Borough of Queens, and upon and along Thomson Avenue, Hoffman Boulevard and other streets and avenues in the Borough of Queens to the boundary line between The City of New York and the County of Nassau; and

Whereas, This Board, by resolution adopted November 21, 1912, and approved by the Mayor November 22, 1912, granted consent to the South Shore Traction Company to assign, transfer and set over all rights and privileges granted by said contract dated October 29, 1912, so that the same should pass to and vest in the Man-
39 hattan and Queens Traction Corporation; and

Whereas, Such assignment of said rights and privileges was subsequently made; and

Whereas, By a contract dated July 21, 1913, Section 2, First, of said contract dated October 29, 1912, was amended; and

Whereas, By a contract dated January 21, 1916, Section 3, Seventh and Eighth, of said contract dated October 29, 1912, as amended by said contract dated July 21, 1913, was further amended; and

Whereas, Section 3, Seventh, of said contract of October 29, 1912, as amended by said contract of January 21, 1916, provides as follows:

"Seventh. The Company shall complete and put in operation that portion of the railway herein authorized from the Manhattan Terminal of the Queensboro Bridge to the intersection of the tracks of the Long Island Railroad with Thomson Avenue at or near Greenpoint Avenue on or before February 13, 1913, from the intersection of the tracks of the Long Island Railroad Company with Thomson Avenue to the intersection of Thomson Avenue and Broadway on or before April 30, 1913, from the intersection of Thomson Avenue and Broadway to the proposed new Long Island Railroad station in the former Village of Jamaica, on or before January 31, 1914.

"The Company shall complete and put in operation that portion of its railway herein authorized between the present terminus thereof,

at the Long Island Railroad Company's station, at Jamaica, and the intersection of Sutphin Road (Guilford Street) and
40 Lambertville Avenue (Pacific Street), on or before May 1, 1916, and the remainder of its said railway between said intersection of Sutphin Road (Guilford Street) and Lambertville Avenue (Pacific Street) and the City Line at Central Avenue within such time or times. as may be directed by resolution of the Board upon recommendation of the President of the Borough, provided that title to the streets involved has been vested in the City and that said streets have been regulated and graded.

"Upon the failure of the Company to complete the construction and place in operation any of the said portions of the railway on or before the date or times herein specified, the right herein granted shall cease and determine, and all sums or securities paid to the City, or deposited with the Comptroller as security for performance by the Company of the terms and conditions of this contract, as herein provided, shall be forfeited to the City without action by the City, provided, however, that the Board may extend the time within which to complete the construction and place the railway in operation as it may deem just and equitable," and

Whereas, The President of the Borough of Queens, in a communication, dated January 11, 1917, which was presented to the Board at its meeting of January 26, 1917, has, pursuant to said above-quoted provision, requested that this Board adopt a resolution requiring said Manhattan and Queens Traction Corporation to complete and put in operation that portion of its street surface rail-
41 way between the intersection of Sutphin Road and Lambertville Avenue and the intersection of Central Avenue, with Springfield Road; and

Whereas, Title to all the streets involved has been vested in the City; now, therefore, be it

Resolved, That pursuant to said Section 3, Seventh, of said contract of October 29, 1912, as amended by said contract of January 21, 1916, the Manhattan and Queens Traction Corporation be and it hereby is directed to commence construction of that portion of its street surface railway authorized by said contract of October 29, 1912, as amended by said contract of July 21, 1913, from the intersection of Sutphin Road and Lambertville Avenue to the intersection of Central Avenue and Springfield Road, within thirty (30) days, and to complete and put in operation said portion of its street surface railway within six (6) months from the date of the approval of this resolution by the Mayor.

A true copy of resolution adopted by the Board of Estimate and Apportionment February 16, 1917.

JAMES D. McGANN,
Assistant Secretary.

The foregoing resolution is hereby approved.

JOHN PURROY MITCHEL,
Mayor.

Dated, New York, February 23, 1917.

I hereby certify that the foregoing is a true copy of the original approved resolution as filed in this office.

JAMES D. McGANN,
Assistant Secretary.

42 EXHIBIT B, ATTACHED TO THE FOREGOING PETITION.

Board of Estimate and Apportionment, City of New York.

150. K.

Whereas, the President of the Borough of Queens has transmitted to the Board of Estimate and Apportionment a copy of a resolution of the Local Board of the Jamaica District duly adopted by said Board on the 6th day of December, 1915, and approved by the President of the Borough of Queens on the 9th day of December, 1915, as follows, to wit:

"For regulating and grading at the legal grade and full width Lambertville Avenue (Pacific Street) between Sutphin Road and Spangler (Vine) Street; Spangler (Vine) Street between Lambertville Avenue (Pacific Street) and Brinkerhoff Avenue; Brinkerhoff Avenue between Spangler (Vine) Street and Smith Street (Woodland Avenue); Smith Street (Woodland Avenue) between Brinkerhoff Avenue and Ulster Avenue; Ulster Avenue, between Smith Street (Woodland Avenue) and Merrick Road, excepting the following numbered parcels as shown on the damage map of the Lambertville Avenue: Nos. 24, 25, 33, 94, 115, 107 and 119."

"Exception: That Lambertville Avenue between Freehold Street (Norris Avenue) and Medford (Prospect) Street shall be graded to a temporary grade extending from the legal grade at Freehold Street (Norris Avenue) to the existing elevation of the Long Island Railroad tracks, and thence to the legal grade at Medford (Prospect) Street, Fourth Ward of the Borough of Queens,"

43 and which resolution is accompanied with an approximate estimate of the cost of the work and the assessed value of the property benefited.

Resolved, that the Board of Estimate and Apportionment hereby authorizes the President of the Borough of Queens to prepare plans, specifications and an estimate of the cost based on actual survey, and also to secure a determination of the boundary of the district of assessment; the entire expense of the work done subsequent to the date of this authorization to be charged against the Street Improvement Fund and later included in the assessment.

Resolved, that the Board of Estimate and Apportionment will consider the authorization of the construction of the said proposed improvement after the President of the Borough of Queens has submitted a statement showing that all of the above described work has been done, that he has secured the approval of the form of contract by the Corporation Counsel, that he is prepared to place the improvement under contract as soon as he receives the consent of the Board, and that the assessment map will be completed on or before the date of payment on acceptance; this report being accompanied by a further statement showing the quantity of work to be performed under each item and the unit price thereof, the expense incurred for preliminary work, the allowance to be made for additional engineering and contingencies, the total probable cost, and the number of working days to be allowed the contractor for carrying out the work.

I hereby certify that the foregoing is a true copy of a
44 resolution adopted by the Board of Estimate and Apportionment at a meeting of said Board held on December 10, 1915.

J. HAAG,
Secretary.

10¢ Revenue Stamp. Cancelled 12/17/15. J. C. D.

EXHIBIT C, ATTACHED TO THE FOREGOING PETITION.

To the Honorable Board of Estimate and Apportionment of the City of New York:

Manhattan and Queens Traction Corporation respectfully petitions your Board as follows:

This Corporation has completed and put in operation its street surface railroad from the Long Island Plaza of the Queensboro Bridge over and upon the route set forth in its franchise contract and in the amendments thereof to the intersection of Sutphin Road (Rockaway Turnpike) and Lambertville Avenue (Pacific Street), in the Borough of Queens, City of New York.

That on March 26th, 1917, it filed with the Bureau of Franchises consents of abutting property owners to the construction, maintenance and operation of its street surface railroad upon and along Lambertville Avenue from Sutphin Road to Spangler Street, which consents were duly accepted by your Board April 20th, 1917.

On April 29th, 1916 this Corporation ordered from The Lorain Steel Company six hundred (600) tons of steel rails with
45 necessary splice bars, tie rods and bolts. Owing to the exceptional demand, created by the war, of the United States Government and its Allies for steel, the steel company has been unable to deliver this material. This month the steel company has advised the Corporation that its said rails have not, as yet, been rolled. The steel company is required to give precedence to Government work. The Chamber of Commerce of the United States

of America in "War Bulletin No. 2," dated June 20th, 1917, states and requires that "construction and development work requiring steel should be postponed wherever possible." For your information, we hand you a copy of this bulletin with this petition.

The Corporation reports that it has obtained a permit from the Bureau of Highways in the Borough of Queens to construct its road on Lambertville Avenue.

The Corporation has erected steel poles and placed suspension wires to support the trolley wire on Lambertville Avenue from Sutphin Road to Spangler Street. Although an order has been placed for the trolley wire with John A. Roebling's Sons, this wire has not been delivered.

After long negotiations with the Long Island Railroad Company, terms of a contract for the erection of a trestle over its right of way across Lambertville Avenue have been agreed upon with one exception. Undoubtedly, an agreement will be reached this month.

The Corporation has on hand the greater part of the material with which to construct this trestle.

The Corporation has ordered the special work for the curve at Sutphin Road and Lambertville Avenue, the necessary turn-
46 outs for the trestle over the tracks of the Long Island Railroad Company and the double track crossings for the crossing of the tracks of the Long Island Electric Railway Company at New York Avenue. A contract has been entered into with the Long Island Electric Railway Company, permitting this crossing. The curve at Sutphin Road and Lambertville Avenue has been installed and the crossing at New York Avenue will be installed during this month.

The Corporation has placed its order for ties and approximately nine hundred (900) ties have been delivered.

The Corporation has all of the necessary special overhead material on hand for Lambertville Avenue.

The Corporation has kept in touch, from time to time, with the cost of paving material and of labor, but as prices therefor change so rapidly, it has been considered unwise to award the contract for the paving of Lambertville Avenue until the rails have been delivered.

Your petitioner has, at all times, been prepared to proceed with the work on Lambertville Avenue as soon as material can be obtained, and in fact has kept an organization for that purpose.

Your petitioner respectfully states to your Honorable Board that, in view of the above circumstances, it has been impossible for it to do more than it has done under the circumstances.

The Traction Corporation, your petitioner, states that owing to the situation with reference to material, it cannot estimate the time within which it will be able to complete such work.

47 In presenting this petition, based on the above facts, your petitioner reserves the right to submit any other facts and reasons at the time of hearing, and its other rights in the premises.

Wherefore, your petitioner respectfully asks that your Board

grant it an extension of six (6) months from the date when it shall receive the necessary material with which to complete and put into operation that portion of its street surface railroad from the intersection of Sutphin Road and Lambertville Avenue to the intersection of Central Avenue and Springfield Road in the Borough of Queens.

Dated August 16th, 1917.

MANHATTAN AND QUEENS TRACTION CORPORATION,
(Sgd.) By S. B. SEVERSON,
(Corporate seal.) *President.*

Attest:
(Sgd.) LINDLEY G. COLEMAN,
Secretary.

STATE OF NEW YORK,
County of New York, ss:

S. B. Severson, being duly sworn, deposes and says:
That he is the president of the Manhattan and Queens Traction Corporation, the petitioner described in the foregoing petition. That he has read the said petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters
48 therein stated to be alleged on information and belief and that as to those matters he believes it to be true.
(Sgd.) S. B. SEVERSON.

Sworn to before me this 16th day of August, 1917.

[SEAL.] OLIVE A. BILLARD,
Notary Public, New York County No. 140,
New York Register No. 8022.

EXHIBIT D, ATTACHED TO THE FOREGOING PETITION.

To the Honorable Board of Estimate and Apportionment of the City of New York:

Manhattan and Queens Traction Corporation respectfully shows your Board as follows:
On August 18th, 1917, a petition was filed dated August 16th, 1917, asking for an extension of time within which to complete and put in operation a railroad of this Corporation to the intersection of Central Avenue and Springfield Road in the Borough of Queens.
This matter for the first time appeared as Number 127 on the calendar of the Board on October 19th, 1917, with a resolution providing for the service of a notice of default, and fixing Friday, November the 9th, as the day for hearing on such default only.
When Number 127 was called on October 19th, 1917, Robert S.

Sloan, Esq., on behalf of this Corporation, appeared and asked that he might be heard; but the matter was disposed of without much opportunity being given to this Corporation, as the Mayor
49 thereafter immediately left the meeting of the Board, and no quorum was present for reconsideration. The President of the Borough of Queens, however, stated that he himself would ask for a consideration of the matter, and stated to Mr. Sloan that the Board would reconvene at eleven o'clock October 20th, 1917. On October 20th, at said time, Mr. Sloan again appeared and presented the matter. The President of the Board of Aldermen, sitting as Mayor, granted this Corporation permission to file a petition for reconsideration, stating that he would vote for a reconsideration of the matter.

Wherefore, this Corporation respectfully asks that the action taken by the Board on Number 127, be brought up for reconsideration on November 9th, 1917, and that at that time that the Board, before considering a resolution looking to the service of a notice of default, consider and dispose of the petition of this Corporation for an extension of time, and that an appropriate resolution be drawn for the latter purpose.

Dated, October 20, 1917.

MANHATTAN AND QUEENS TRACTION CORPORATION,
(Sgd.) By LINDLEY G. COLEMAN,
Secretary.

50 STATE OF NEW YORK,
County of New York, ss:

Lindley G. Coleman, being duly sworn, deposes and says: That he is the Secretary of the Manhattan and Queens Traction Corporation; that he has read the foregoing petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(Sgd.) LINDLEY G. COLEMAN.

Sworn to before me this 22nd day of October, 1917.
(Sgd.) EDNA A. STOKES,
Notary Public, Kings County No. 369.

Kings Register No. 9136.
New York County No. 485.
New York Register No. 9889.
My Commission expires March 30, 1919.

[Notarial Seal.]

51 EXHIBIT E, ATTACHED TO THE FOREGOING PETITION.

Board of Estimate and Apportionment, City of New York.

Franchises.

"Resolved, That the Manhattan and Queens Traction Corporation be and it is hereby notified, under and pursuant to Section 5, Thirteenth, of the contract dated October 29, 1912, by and between The City of New York and the South Shore Traction Company, which said contract was, with the consent of the Board of Estimate and Apportionment given by resolution adopted November 21, 1912, and approved by the Mayor November 22, 1912, assigned to the Manhattan and Queens Traction Corporation, to appear before the Board of Estimate and Apportionment on November 9, 1917, at a meeting of said Board to be held on said date, at 10:30 o'clock A. M., in Room 16, City Hall, Borough of Manhattan, and show cause why a resolution declaring forfeited the contract dated October 29, 1912, granting a franchise to the South Shore Traction Company and subsequently assigned to the Manhattan and Queens Traction Corporation, and the contracts dated July 21, 1913, and January 21, 1916, by and between The City of New York and the Manhattan and Queens Traction Corporation, amending said contract dated October 29, 1912, should not be adopted, and why such resolution shall not provide that the railway constructed and in use by virtue of said contracts shall thereupon become the property of The City of New
52 York without proceedings at law or in equity; and be it further

Resolved, That the Secretary of this Board be and he hereby is directed to forward to the Manhattan and Queens Traction Corporation copies of these resolutions and notify said Corporation in writing, that on the aforementioned date, at said time and place, said Corporation will be allowed a hearing before final action is taken.

A true copy of resolution adopted by the Board of Estimate and Amendment October 19, 1917.

(Signed) JAMES D. McGANN,
Assistant Secretary.

53 EXHIBIT F, ATTACHED TO THE FOREGOING PETITION.

(Copy.)

Document 38634.

Department of Finance, The City of New York, Bureau for the Collection of City Revenue and of Markets.

New York 11/17/17.

Received for The City of New York, From Manhattan and Queens Traction Corporation $5,620.65—Five thousand six hundred and twenty 65/100 Dollars.

For Bridge Tolls @ 5¢ a car, Queensboro Bridge one year to September 30/17.

S. H. GOODACEE,
Collector of City Revenue and Supt. of Markets.
C. S. RUSSELL.

This form of receipt only is good as a voucher for payment of miscellaneous rentals, franchise fees and taxes, int. on Bond & Mortgages, etc.
Any other form is void for such purpose.
This form of receipt must not be used for market stand rentals.

(Copy.)

Document 38635.

Department of Finance, City of New York Bureau for the Collection of City Revenue and of Markets.

New York 11/17/17.

Received for The City of New York, From Manhattan and Queens Traction Corporation $2,099.88—Two thousand and Ninety-nine and 88/100 Dollars.
For use of the Queensboro Bridge Terminals one year to September 30th, 1917.

S. H. GOODACEE,
Collector of City Revenue and Supt. of Markets.
C. S. RUSSELL.

This form of receipt only is good as a voucher for payment of miscellaneous rentals, franchise fees and taxes, int. on bond & mortgages, etc.
Any other form is void for such purpose.
This form of receipt must not be used for market stand rentals.

(Copy.)

Document 38611.

Department of Finance, The City of New York.

Bureau for the Collections of City Revenue and of Markets.

New York 11/1/17.

Received for The City of New York from Manhattan and Queens Traction Corporation $9,454.91—Nine thousand four hundred fifty-four and 91/100 dollars.

For on account of 3% of Gross Receipts—$315,163.91, 1 year to September 30/1917.

S. H. GOODACEE,
Collector of City Revenue and Supt. of Markets.
C. S. RUSSELL.

This form of receipt only is good as a voucher for payment of miscellaneous rentals, franchise Fees and Taxes, Int. on Bond & Mortgages, etc.

Any other form is void for such purpose.

This form of receipt must not be used for market stand rentals.

56 (Copy.)

Voucher.

No. 5867.

Long Island City, N. Y. November 1st, 1917.

Manhattan and Queens Traction Corporation in Account with Comptroller, City of New York.

Date. 1917.			
Nov.	For payment as per provisions of contract dated October 29th, 1912, 3% on Gross Earnings for year ended Sept. 30th, 1917.....	9,454.91	
	For Bridge Tolls for year ended September 30th, 1917.....	5,620.65	
	For Track and Terminal Privileges for year ended September 30th, 1917...	2,099.88	
			17,175.44

Invoices and Distribution Correct.
M. C. HOPKINS,
Voucher Clerk.

Correct.
F. H. A.
Auditor.

Approved for payment.
L. V. COLEMAN,
General Manager.

Received 11/1/17 of Manhattan and Queens Traction Corporation Seventeen Thousand One Hundred Seventy Five and 44/100 Dollars, $17,175.44 in full of above Account.
Check No. —.
S. H. GOODACEE.
C. S. RUSSELL.

Please Date and Sign this Voucher and Return Promptly to the Manhattan and Queens Traction Corporation.

57 (Back of Voucher.)

Voucher Register No. 5867. Check Register No. 5239.

Manhattan and Queens Traction Corporation,

Comptroller, City of New York,

Municipal Building, New York City.

$17,175.44

Entered November 1917.

Paid 11/1/17. Check No. 2462.

Miscellaneous Accounts.

Acc. Gross Ean. C of N. Y.	9,454.91
Bridge Tolls Accrls.	5,620.65
Track Terminal Priv. Accr.	2,099.88

58 EXHIBIT G, ATTACHED TO THE FOREGOING PETITION.

(Copy.)

Document 37979:

Department of Finance, The City of New York.

Bureau for the Collection of City Revenue and of Markets.

New York 11/1/17.

Received for the City of New York from Manhattan and Queens Traction Corp. $100—One hundred 00/100 Dollars.
For 3 connecting curves Sutphin Rd., Queens, from 11/1/17 to 11/1/18.

S. H. GOODACEE,
Collector of City Revenue and Supt. of Markets.
C. S. RUSSELL.

This form of receipt only is good as a voucher for payment of miscellaneous rentals, franchise fees and taxes, int. on bond & mortgages, etc.
Any other form is void for such purpose.
This form of receipt must not be used for market stand rentals.

59 (Copy.)

Document 37980.

Department of Finance, The City of New York.

Bureau for the Collection of City and of Markets.

New York 11/1/17.

Received for the City of New York, from Manhattan and Queens Traction Corp. $100—One hundred 00/100 dollars.
For to operate crossovers Van Dam Street Nelson Avenue, Queens from 11/17/17 to 11/1/18.

S. H. GOODACEE,
Collector of City Revenue and Supt. of Markets.
C. S. RUSSELL.

This form of receipt only is good as a voucher for payment of miscellaneous rentals, franchise fees and taxes, int. on bond & mortgages, etc.
Any other form is void for such purpose.
This form of receipt must not be used for market stand rentals.

60 (Copy.)

Voucher.

No. 5866.

Long Island City, N. Y., November 1st, 1917.

Manhattan and Queens Traction Corporation in Account with Comptroller, City of New York.

Date.		
1917.		
Nov.	For payment to operate crossover and turnouts for one year to November 1, 1918 as per approved resolution #79 of Board of Estimate and Apportionment	100.00
	For payment to operate connecting curves for one year to November 1st, 1917, as per approved resolution #80 of Board of Estimate and Apportionment.....	100.00
		200.00

Invoices and Distribution Correct.
M. C. HOPKINS,
Voucher Clerk.

Correct.
F. H. A. *Auditor.*

Approved for payment.
L. V. COLEMAN,
General Manager.

Received 11/1/ of Manhattan and Queens Traction Corporation Two Hundred and 00/100 Dollars, $200.00 in full of above Account. Check No. —.
S. H. GOODACEE.
C. S. RUSSELL.

Please Date and Sign this Voucher and Return Promptly to the Manhattan and Queens Traction Corporation.

EXHIBIT G.

(Back of Voucher.)

Voucher Register No. 5866.

Check Register No. 5240.

MANHATTAN AND QUEENS TRACTION CORPORATION

COMPTROLLER, CITY OF NEW YORK

Municipal Building, New York City

$200.00

Entered November 1917.

Paid 11/1/17. Check No. 2463.

MISCELLANEOUS ACCOUNTS.

323 Prepaid Rents 200 00

Proposed Resolution Drafted by Bureau of Franchises of the Board of Estimate and Apportionment for Submission to Said Board in Preparation for the Hearing to Be Held November 9, 1917, on the Proposed Forfeiture of the Franchise of the Manhattan and Queens Traction Corporation.

City of New York.

Board of Estimate and Apportionment.

Franchise Matters.

Whereas, Pursuant to a resolution of the Board of Estimate and Apportionment adopted July 15, 1912, and approved by the Mayor

July 16, 1912, a contract, dated October 29, 1912, was entered into between The City of New York and the South Shore
62 Traction Company, for the construction, maintenance and operation of a street surface railway upon and over the Queensboro Bridge and upon and along various streets and avenues in the Borough of Queens, between said bridge and the Nassau County line, as is more fully set forth and described in Section 2 of said contract; and

Whereas, By resolution adopted by the Board of Estimate and Apportionment November 21, 1912, and approved by the Mayor November 22, 1912, said Board granted consent to the South Shore Traction Company to assign, transfer and set over all rights and privileges granted by said contract of October 29, 1912, so that the same should pass to and vest in the Manhattan and Queens Traction Corporation; and

Whereas, Such assignment of said rights and privileges was subsequently made and said Manhattan and Queens Traction Corporation took possession of the property of said South Shore Traction Company and took over the operation of the local service maintained on the Queensboro Bridge by said South Shore Traction Company, at midnight on December 27, 1912; and

Whereas, Pursuant to a resolution of the Board of Estimate and Apportionment adopted July 3, 1913, and approved by the Mayor on the same day, said contract of October 29, 1912, was modified and amended by a contract dated July 21, 1913, entered into between The City of New York and said Manhattan and Queens Traction Corporation; and

Whereas, Pursuant to a resolution of the Board of Estimate and Apportionment adopted December 17, 1915, and approved by
63 the Mayor December 18, 1915, said contract of October 29, 1912, as amended by said contract of July 21, 1913, was further modified and amended by contract dated January 21, 1916, entered into between The City of New York and the said Manhattan and Queens Traction Corporation; and

Whereas, Section 3, Seventh, of said contract of October 29, 1912, as amended by said contract of January 21, 1916, provides as follows:

"Seventh. The Company shall complete and put in operation that portion of the railway herein authorized from the Manhattan terminal of the Queensboro Bridge to the intersection of the tracks of the Long Island Railroad with Thomas Avenue at or near Greenpoint Avenue on or before February 13, 1913, from the intersection of the tracks of the Long Island Railroad Company with Thomson Avenue to the intersection of Thomson Avenue and Broadway on or before April 30, 1913, from the intersection of Thomson Avenue and Broadway to the proposed new Long Island Railroad station in the former Village of Jamaica, on or before January 31, 1914,

"The Company shall complete and put in operation that portion of its railway herein authorized between the present terminus thereof at the Long Island Railroad Company's station at Jamaica, and the intersection of Sutphin Road (Guilford Street) and Lambertville

Avenue (Pacific Street), on or before May 1, 1916, and the remainder of its said railway between said intersection of Sutphin Road
64 (Guilford Street) and Lambertville Avenue (Pacific Street) and the City Line at Central Avenue within such time or times as may be directed by resolution of the Board upon recommendation of the President of the Borough, provided that title to the streets involved has been vested in the City and that said streets have been regulated and graded.

"Upon the failure of the Company to complete the construction and place in operation any of the said portions of the railway on or before the date or times herein specified, the right herein granted shall cease and determine, and all sums or securities paid to the City, or deposited with the Comptroller as security for performance by the Company of the terms and conditions of this contract, as herein provided, shall be forfeited to the City without action by the City, provided, however, that the Board may extend the time within which to complete the construction and place the railway in operation as it may deem just and equitable," and

Whereas, By resolution adopted by said Board of Estimate and Apportionment February 16, 1917, and approved by the Mayor February 23, 1917, said Manhattan and Queens Traction Corporation was directed to commence construction of that portion of its street surface railway authorized by said contract of October 29, 1912, as amended by said contract of July 21, 1913, from the intersection of Sutphin Road and Lambertville Avenue to the intersection of Central Avenue and Springfield Road, on or before March
65 23, 1917, and to complete and put in operation said portion of its street surface railway on or before August 23, 1917; and

Whereas, Said Manhattan and Queen Traction Corporation has failed or neglected to complete construction of and put in operation that portion of its street surface railway authorized by said contract of October 29, 1912, as amended by said contract of July 21, 1913, from the intersection of Sutphin Road and Lambertville Avenue to the intersection of Central Avenue and Springfield Road, on or before August 23, 1917; and

Whereas, Section 5, Thirteenth, of said contract of October 29, 1912, provides as follows:

"Thirteenth. In case of any violation or breach of failure to comply with any of the provisions herein contained, this contract may be forfeited by a suit brought by the Corporation Counsel on notice of ten (10) days to the Company, or at option of the Board by resolution of said Board, which said resolution may contain a provision to the effect that the railway constructed and in use by virtue of this contract shall thereupon become the property of the City without proceedings at law or in equity. Provided, however, that such action by the Board shall not be taken until the Board shall give notice to the Company to appear before it on a certain day, not less than ten (10) days after the date of such notice, to show cause why such resolution declaring the contract forfeited should not be adopted. In

case the Company fails to appear, action may be taken by the Board forthwith," and

66 Whereas, At a meeting of this Board held October 19, 1917, the following resolutions were adopted:

"Resolved, That the Manhattan and Queens Traction Corporation be and it is hereby notified, under and pursuant to Section 5, Thirteenth, of the contract dated October 29, 1912, by and between The City of New York and the South Shore Traction Company, which said contract was, with the consent of the Board of Estimate and Apportionment given by resolution adopted November 21, 1912, and approved by the Mayor November 22, 1912, assigned to the Manhattan and Queens Traction Corporation, to appear before the Board of Estimate and Apportionment on November 9, 1917, at a meeting of said Board to be held on said date, at 10:30 o'clock A. M., in Room 16, City Hall, Borough of Manhattan, and show cause why a resolution declaring forfeited the contract dated October 29, 1912, granting a franchise to the South Shore Traction Company and subsequently assigned to the Manhattan and Queens Traction Corporation, and the contracts dated July 21, 1913, and January 21, 1916, by and between The City of New York and the Manhattan and Queens Traction Corporation, amending said contract dated October 29, 1912, should not be adopted, and why such resolution shall not provide that the railway constructed and in use by virtue of said contracts shall thereupon become the property of The City of New York without proceedings at law or in equity; and

67 be it further

Resolved, That the Secretary of this Board be and he hereby is directed to forward to the Manhattan and Queens Traction Corporation copies of these resolutions and notify said corporation, in writing, that on the aforementioned date, at said time and place, said Corporation mentioned will be allowed a hearing before final action is taken," and

Whereas, On October 19, 1917, a copy of the aforesaid resolution was forwarded to said Manhattan and Queens Traction Corporation and said corporation notified, in writing, that it would be allowed a hearing on November 9, 1917, before final action is taken; and

Whereas, Such hearing was held on November 9, 1917, upon request of the Acting President of the Borough of Queens was continued to November 16, 1917, when it was continued to December 21, 1917, when it was continued to January 18, 1918, when it was again continued and was concluded after hearing Robert S. Sloan, Counsel to the Corporation, and*

Whereas, In the opinion of the Board of Estimate and Apportionment, the Corporation has failed to comply with the provisions of said contract of October 29, 1912, as amended by said contracts of July 21, 1913 and January 21, 1916, the violation or breach of

*(The meeting on Jan. 18, 1918, was never held because of stay and Mr. Sloan never appeared after the date of said stay.)

which provisions renders the said contracts liable to forfeiture; and

68 Whereas, Due deliberation having been had, the Board of Estimate and Apportionment hereby determines that the Manhattan and Queens Traction Corporation has broken and failed and neglected to comply with the provisions of the contract dated October 29, 1912, as amended by the contract dated July 21, 1913, and the contract dated January 21, 1916, and said consents, franchises and contracts should be forfeited to The City of New York on account of such violation, breach and default, and the railway constructed and in use under and by virtue of said contracts shall thereupon become the property of The City of New York; now, therefore, be it

Resolved, That the Board of Estimate and Apportionment, under and pursuant to the provisions of Section 5, Thirteenth, of the said contract dated October 29, 1912, herein and hereby declares forfeited to The City of New York the contract dated October 29, 1912, between The City of New York and the Manhattan and Queens Traction Corporation, granting a franchise to the said Corporation, and the contracts dated respectively July 21, 1913 and January 21, 1916, modifying and amending said contract dated October 29, 1912; and be it further

Resolved, That the railway constructed and in use by virtue of said contracts dated October 29, 1912, July 21, 1913 and January 21, 1916, shall, from and after this date, become the property of The City of New York without proceedings at law or in equity; and be it further

Resolved, That the Secretary of this Board be and he is hereby directed to forward a copy of these resolutions to the Manhattan and Queens Traction Corporation.

69 *Contract, Dated October 29, 1912, Between The City of New York and the South Shore Traction Company.*

The City of New York and South Shore Traction Company.

Street Surface Railway upon and along Thomson Avenue, Hoffman Boulevard and Other Streets and Avenues in the Borough of Queens, from the Queensboro Bridge Plaza to the Boundary Line Between the City of New York and the County of Nassau, Together with the Right to Operate upon the Queensboro Bridge.

Also Declaring Null and Void the Contract Dated May 20, 1909, Granting the Company a Franchise, the Contract Dated December 31, 1909, and the Agreement Dated December 24, 1909, Modifying and Amending Said Contract of May 20, 1909.

Contract, Dated October 29, 1912.

Authorized by Board of Estimate and Apportionment July 15, 1912, and approved by the Mayor July 16, 1912.

This contract, made this 29th day of October, 1912, by and
70 between The City of New York (hereinafter called the City), party of the first part, by the Mayor of said City, acting for and in the name of said City, under and in pursuance of the authority of the Board of Estimate and Apportionment of said City (hereinafter called the Board), and the South Shore Traction Company (hereinafter called the Company), party of the second part, witnesseth:

Whereas, On May 20, 1909, a contract was executed by the City granting the right or privilege to the South Shore Traction Company to construct, maintain and operate a street surface railway with the necessary wires and equipment for the purpose of conveying persons and property in the Boroughs of Queens and Manhattan in the City of New York, from the westerly terminal of the Queensboro Bridge to the boundary line between the City and Nassau County, by the way of the Queensboro Bridge and various streets and avenues in the Borough of Queens; and

Whereas, A contract dated December 31, 1909, and an agreement dated December 24, 1909, were executed which purported to modify said contract executed May 20, 1909; and

Whereas, On May 2, 1912, the Receivers of the South Shore Traction Company petitioned the Board to have said contract of December 31, 1909, and said agreement of December 24, 1909, declared null and void and of no effect, and that said contract dated May 20, 1909, be amended, first, as to route, and second, in such other respects as the Board deems fit and proper;

Now, therefore, in consideration of the premises and of the
71 mutual covenants herein contained, the parties do hereby covenant and agree as follows:

Section 1. The said contracts of May 20, 1909, and of December 31, 1909, and said agreemnt of December 24, 1909, are hereby declared by the parties hereto to be null and void and of no effect and the grant herein contained with the conditions thereof shall in all respects be substituted for and take the place of all the rights and privileges granted by said contracts and agreement.

Sec. 2. The City hereby grants to the Company, subject to the conditions and provisions hereinafter set forth, the following rights and privileges:

First. To construct, maintain and operate a street surface railway with the necessary wires and equipment for the purpose of conveying persons and property in the Boroughs of Queens and Manhattan of The City of New York, upon the following routes, to wit:

Beginning at the southeasterly line of the Queensboro Bridge Plaza, the same being the northwesterly side line of Jackson Avenue; thence by double track, in, upon and across Jackson Avenue to the viaduct over the Sunnyside Yards of the Long Island Railroad Company (Queens Boulevard) or the approach thereto; thence by double track upon and along the viaduct over the Sunnyside Yards of the

Long Island Railroad Company (Queens Boulevard) and the approaches thereto; to Thomson Avenue; thence by double track in and upon Thomson Avenue to Hoffman Boulevard; thence by double track in and upon Hoffman Boulevard, to Brooklyn and
72 Jamaica Turnpike or Fulton Street; thence by double track in and upon Brooklyn and Jamaica Turnpike or Fulton Street to Rose Avenue and by single track to Campion Avenue; thence by single track in and upon Rose Avenue to Archer Place and by single track in and upon Campion Avenue to Carll Street; thence by single track in and upon Archer Place to private property, and by single track in and upon Carll Street to private property; thence in and upon private property by single or double track to a point approximately in line with Guilford Street if the same were extended; thence by double track in and upon private property approximately in line with Guilford Street if the same were extended and crossing under the tracks of the Long Island Railroad Company to Guilford Street; thence by double track in and upon Guilford Street to a point between Beaufort Avenue and Broadway; thence by double track in and upon private property to and across Liberty Avenue to Jay Street; thence by double track in and upon Jay Street to and across Sylvester Avenue; thence by double track in and upon private property to Rockaway Turnpike at approximately the point where the same is intersected by Shore Avenue; thence by double track in and upon Rockaway Turnpike to Pacific Street; thence by double track in and upon Pacific Street to and across Brooklyn Avenue; thence by double track in and upon private property approximately in line with Pacific Street if the same were extended, to Vine Street; thence by double track in and upon Vine Street to State Street; thence by double track in and upon State Street to Woodland Avenue; thence by double track in and upon Woodland Avenue to private property; thence by double
73 track in and upon private property approximately on a line with Woodland Avenue if the same were extended, to a point approximately in line with Central Avenue if the same were extended; thence by double track in and upon private property approximately on a line with Central Avenue if the same were extended, to Merrick Road; thence by single track across Merrick Road to Central Avenue; thence by single track in and upon Central Avenue and crossing the Montauk Division of the Long Island Railroad to a point where Central Avenue intersects the boundary line between the City of New York and the County of Nassau.

Said route between the point in private property approximately in line with Guilford Street if the same were extended, and the point where Central Avenue is intersected by the boundary line between the City of New York and the County of Nassau, lying within certain streets as shown upon a map commonly known as the "Jamaica Map" which was adopted by the Board of Estimate and Apportionment January 11, 1912, and showing the street system and grades of that portion of the Fourth Ward, Borough of Queens, City of New York, bounded by Hillside Avenue, Villard Avenue, Old Country Road, Farmers Avenue, Freeport Avenue, Rockaway Bou-

levard, Van Wyck Avenue and New Haven Avenue, to wit: Sutphin Road from a point between the tracks of the Long Island Railroad and Brooklyn and Jamaica Turnpike or Fulton Street and crossing under the tracks of the Long Island Railroad to Lambertville Avenue; Lambertville Avenue from Sutphin Road to
74 Spangler Street; Spangler Street from Lambertville Avenue to Brinkerhoff Avenue; Brinkerhoff Avenue from Spangler Street to Smith Street; Smith Street from Brinkerhoff Avenue to Ulster Avenue; Ulster Avenue from Smith Street to Westchester Avenue; Westchester Avenue from Ulster Street to the line dividing the City of New York from the County of Nassau.

And to cross such other streets and avenues, named and unnamed, as may be encountered in said routes.

All of the above described routes are within the Borough of Queens, City of New York, and are, together with turnouts, switches and crossovers, hereby authorized shown upon two maps, each entitled:

"Map Showing Proposed Railway of the South Shore Traction Co. in the Borough of Queens City of New York to Accompany Joint Petition Dated May 2, 1912, to the Board of Estimate and Apportionment,"

(Maps referred to are Nos. 1 and 2 in Vol. II—Exhibits—hereof.)

and signed South Shore Traction Co. by Paul T. Brady and Willard V. King, Receivers, Harold B. Weaver, Chief Engineer, Manhattan & Jamaica Railway Co. by A. H. Flint, President and Harold B. Weaver, Chief Engineer, a copy of which is attached hereto, is to be deemed a part of this contract, is to be construed with the text thereof, and is to be substantially followed, provided that deviations therefrom and additional turnouts, switches and crossovers, which are consistent with the foregoing description, and the other provisions of this contract may be permitted by resolution of the Board.

Second. To operate the cars of the Company upon two
75 tracks when constructed upon the Queensboro Bridge and approaches thereto, such tracks to be assigned to the Company by the Commissioner of Bridges; beginning at the northwesterly side line of Jackson avenue at the Bridge plaza, in the Borough of Queens, and there connecting with the tracks of the Company above described; thence in and upon said bridge plaza to the easterly approach to the Queensboro Bridge; thence upon and along said bridge approach and across intersecting streets and avenues to the Queensboro Bridge; thence upon and along the Queensboro Bridge to the westerly bridge approach; thence upon and along said westerly bridge approach to the westerly terminus thereof, in the Borough of Manhattan. The said route is more particularly shown upon the map hereinbefore referred to, and is to be operated by the Company as a continuous route in connection with the route hereinbefore described.

Sec. 3. The grant of the right or privilege to construct, maintain and operate the said railway from the Queensboro Bridge plaza, at

Jackson avenue, Borough of Queens, to the intersection of Central avenue and the boundary line between the Borough of Queens and the County of Nassau, upon the route hereinbefore described, is subject to the following conditions, which shall be complied with by the Company.

First. The consent in writing of the owners of half in value of the property bounded on each street and avenue described in the route of the Company to the construction and operation of said railway, shall be obtained by the Company, and a copy of such con-
76 sents shall be filed with the Board before construction is commenced on such street or avenue. The consent in writing of the owners of half in value of the property bounded on all streets and avenues to the construction and operation of said railway, shall be obtained by the Company within one year from the signing of this contract by the Mayor, and a copy of such consent shall be filed with the Board within such time, or a copy of an order of the Appellate Division of the Supreme Court that said railway ought to be constructed in lieu of such consents.

Second. The said right to construct, maintain and operate said railway shall be held and enjoyed by the Company from the date upon which this contract is signed by the Mayor until May 20, 1934, with the privilege of renewal of said contract for the further period of twenty-five (25) years, upon a fair revaluation of such right and privilege.

If the Company shall determine to exercise its privilege of renewal it shall make application to the Board, or any authority which shall be authorized by law to act for the City in place of the Board. Such application shall be made at any time not earlier than two (2) years and not later than one (1) year before the expiration of the original term of this contract. The determination of the revaluation shall be sufficient if agreed to in writing by the Company and the Board, but in no case shall the annual rate of compensation to the City be fixed at a less amount than the sum required to be paid during the last year prior to the termination of the original term of this contract.

If the Company and the Board shall not reach such agree-
77 ment on or before the day one (1) year before the expiration of the original term of this contract, then the annual rate of compensation for such succeeding twenty-five (25) years shall be reasonable, and either the City (by the Board) or the Company shall be bound upon request of the other to enter into a written agreement with each other fixing the rate of such compensation at such amount as shall be reasonable, but in no case shall the annual rate so fixed be less than the sum required to be paid for the last year prior to the termination of the original term of this contract, and if the parties shall not forthwith agree upon what is reasonable, then the parties shall enter into a written agreement fixing such annual rate and at such amount as shall be determined by three disinterested freeholders selected in the following manner:

One disinterested freeholder shall be chosen by the Board; one

disinterested freeholder shall be chosen by the Company; these tw
shall choose a third disinterested freeholder, and the three so chose
shall act as appraisers and shall make the revaluation aforesai
Such appraisers shall be chosen at least six (6) months prior t
the expiration of this original contract, and their report shall b
filed with the Board within three (3) months after they are chose
They shall act as appraisers and not as arbitrators. They may bas
their judgment upon their own experience and upon such informa
tion as they may obtain by inquiries and investigations, withou
the presence of either party. They shall have the right to examin
any of the books of the Company and its officers under oath
78 The valuations so ascertained, fixed and determined shal
be conclusive upon both parties, but no annual sum shall
in any event, be less than the sum required to be paid for the las
year of this original contract. If in any case the annual rate shal
not be fixed prior to the termination of the original term of thi
contract, then the Company shall pay the annual rate theretofor
prevailing until the new rate shall be determined, and shall then
make up to the City the amount of any excess of the annual rat
then determined over the previous annual rate. The compensation
and expenses of the said appraisers shall be borne jointly by the
City and the Company, each paying one-half thereof.

Third. Upon the termination of this original contract, or if the
same be renewed, then at the termination of the said renewal term,
or upon the termination of the rights hereby granted for any cause,
or upon the dissolution of the Company before such termination,
the tracks and equipments of the Company constructed pursuant
to this contract within the streets and avenues shall become the prop-
erty of the City without cost, and the same may be used or disposed
of by the City for any purpose whatsoever, or the same may be
leased to any company or individual.

If, however, at the termination of this contract as above, the
Board shall so order by resolution, the Company shall, upon thirty
(30) days' notice from the Board, remove any and all of its tracks
and other equipment constructed pursuant to this contract and the
said streets and avenues shall be restored to their original condition
at the sole cost and expense of the Company.

79 Fourth. Nothing in this contract shall be deemed to affect
in any way the right of the City to grant to any other cor-
poration or corporations or to any individual or individuals a similar
right or privilege upon the same or other terms and conditions over
the routes hereinbefore described. The Company shall not at any
time oppose the construction and operation of any street surface
railway by any such other corporation or individual which may
receive a franchise therefor from the City which may necessitate
the use of any portion of the railway which shall be constructed
or operated by the Company pursuant to this contract; and the
consent of the Company to the use of any portion of its railway
by such corporation or individual shall not be necessary.

Should the City at any time during the term of this contract

grant to any other corporation or to any individual the right or privilege to operate a railway upon the tracks of the Company on the route herein described or any portion thereof, then the City shall, within thirty (30) days thereafter, give notice to the Company that such right has been granted and of the name of the corporation or individual to which such right has been granted.

At the expiration of ninety (90) days after the giving of such notice, such individual or corporation shall have the right to begin the operation of cars upon the tracks of the Company upon the route or any portion thereof over which such corporation or individual may receive a right or privilege, and to use therefor the tracks, equipment, power and all other property of the Company which shall be necessary in the operation of the cars of such corporation or individual upon the tracks of the Company, and shall have the right to continue such operation until this contract or the right to use such property under the terms and conditions of this contract granted said corporation or individual by the City shall expire. Such corporation or individual shall pay to the Company for the right to use such tracks, equipment, power and other property above described, such sum or sums as may be agreed upon in writing by such corporation or individual and the Company within said ninety (90) days, or in the event that such agreement cannot be reached within said ninety (90) days, such sum or sums as shall be determined by the Public Service Commission of the State of New York, for the First District.

Within thirty (30) days after such determination by the Public Service Commission such new corporation or individual shall file with the said commission its acceptance or rejection in writing of said determination. In the event of rejection such corporation or individual shall immediately cease the operation of its cars over the tracks of the Company and shall within thirty (30) days thereafter pay to said Company for the use of its tracks and equipment already enjoyed a sum equal to the legal interest on such portion of the actual cost of construction of said railway structures and additions and betterments thereto, as the number of cars operated by such corporation or individual shall have borne to the number of cars operated by the Company or companies using the same during said period; also a like proportion of the cost of keeping the tracks and electrical equipment in repair; also a like proportion of the cost of laying and repairing of pavement, removal of ice and snow, taxes, and all duties imposed upon the Company by the terms of this contract in connection with the maintenance of the operation of said railway so used, together with the actual cost of the power used for the operation of the cars of such individual or corporation. Provided, however, that such corporation or individual shall not be compelled to pay to the Company any sum as compensation for loss to it due to competition.

Fifth. Said railway may be operated by overhead electric power substantially similar to the overhead electric system now in use on street surface railways in the Borough of Queens, or by any other motive power, except locomotive steam power or horse power,

which may be approved by the Board, and consented to by the abutting property owners, in accordance with the provisions of law, and by the Public Service Commission for the First District of the State of New York.

Provided, however, that the Board, at any time after the first ten (10) years of this contract, upon giving to the Company one (1) year's notice, may require the Company to operate its railway upon the whole or any portion of its route lying in and northwesterly from the Brooklyn and Jamaica turnpike, or Fulton street; and at any time after the first fifteen (15) years of this contract, upon giving to the Company one year's notice, may require the Company to operate its railway upon the whole or any portion of its route lying southeasterly from the Brooklyn and Jamaica turnpike, or Fulton street, by underground electric power, substantially similar to the system now in use on the street surface railways in the
82 Borough of Manhattan, or by any other practical motive power then in use which does not require the use of poles and overhead wires in the streets and avenues and thereupon to discontinue the use of the overhead trolley system and remove its poles, wires and other structures used by it for that purpose, from the streets and avenues of the City.

Sixth. Said railway shall be constructed, maintained and operated subject to the supervision and control of all the authorities of the City who have jurisdiction in such matters, as provided by the Charter of the City.

No construction upon said railway shall be commenced until written permits have been obtained from the proper City officials.

The electrical equipment to be installed by the Company for the operation of the railway within the limits of the City, whether the same be upon streets and avenues or upon private property, shall be constructed and maintained under the supervision and control of the Commissioner of Water Supply, Gas and Electricity.

Seventh. The Company shall complete and put in operation that portion of the railway herein authorized from the Manhattan Terminal of the Queensboro Bridge to the intersection of the tracks of the Long Island Railroad with Thomson Avenue at or near Greenpoint Avenue on or before October 31, 1912, from the intersection of the tracks of the Long Island Railroad Company with Thomas Avenue to the intersection of Thomson Avenue and Broadway on or before December 31, 1912, from the intersection of Thomson Avenue and Broadway to the proposed new Long
83 Island Railroad station in the former village of Jamaica, on or before March 31, 1913. The Company shall complete and put in operation that portion of its railway herein authorized between the former Village of Jamaica and the city line at Central Avenue within six months after notification by the President of the Borough of Queens that he is willing to issue a permit for the construction of tracks on the streets involved.

Upon the failure of the Company to complete the construction and place in operation any of the said portions of the railway on or

before the dates or times herein specified, the right herein granted shall cease and determine, and all sums or securities paid to the City, or deposited with the Comptroller, as security for performance by the Company of the terms and conditions of this contract, as herein provided, shall be forfeited to the City without action by the City, provided, however, that the Board may extend the time within which to complete the construction and place the railway in operation as it may deem just and equitable.

Eighth. Said railway shall not cross any railway or railroad other than street surface railways encountered in the route at the grade thereof, but shall be constructed either above or below the grade of such railway or railroad. If any railway or railroad other than street surface railways are operated at the same grade of the streets or avenues in which the Company is hereby authorized to construct a railway at the time the Company constructs such railway, then the Company may construct at its own expense and use a temporary crossing and approaches thereto either upon private property
84 or within the lines of such streets or avenues to be determined by resolution of the Board, and continue to use such temporary crossing until such time as either the grade of such street or avenue or such railway or railroad shall have been changed so that such railway or railroad shall not cross such street or avenue at the grade thereof. When such grade shall have been changed and a permanent crossing shall have been constructed to carry such street or avenue either above or below the grade of such railway or railroad, then the Company shall upon the order of the Board, abandon the above described temporary crossing, and construct its tracks upon such permanent structure as shall be directed by the Board. Any property acquired in fee by the Company for the purpose of the temporary crossing hereinbefore provided for shall be ceded to the City without compensation therefor by the Company, when the same is required by the City for the purpose of widening such street or avenue, upon the removal of the tracks of the Company from such temporary crossing and approaches thereto, to the permanent crossing structure.

Ninth. Any alteration to the sewerage or drainage system, or to any other subsurface or to any surface structures in the streets, required on account of the construction or operation of the railway, shall be made at the sole cost of the Company, and in such manner as the proper City officials may prescribe.

Tenth. Should the grades or lines of the streets and avenues in which the railway is hereby authorized be changed at any time during the term of this contract, or should any such street
85 or avenue be made a boulevard, in which it may be desirable to have the position of the tracks changed, the Company shall, at its own expense, change its tracks to conform with such new grades, lines and positions as shall be directed by the Board or by the official having jurisdiction of such streets, avenues or boulevards, and during the construction of any public improvement upon said

street, avenue or boulevard, the Company shall take care of and protect the track at its own expense; all to be done subject to the direction of the City official having jurisdiction.

Should, in the opinion of the President of the Borough of Queens, the present roadway of any of the said streets, avenues or highways be of insufficient width to accommodate both railway and other vehicular traffic, the Company shall widen such roadway under the direction of the President of the Borough of Queens to a width sufficient to accommodate such traffic; provided, that no roadway shall be widened beyond the total width of the street, avenue or highway.

Eleventh. As long as said railway, or any portion thereof, remains in any street or avenue, the Company shall pave and keep in permanent repair that portion of the surface of the street or avenue in which the said railway is constructed, between its tracks, the rails of its tracks and for a distance of two (2) feet beyond the rails on either side thereof, under the supervision of the local authorities, whenever required by them to do so, and in such manner as they may prescribe. And the City shall have the right to change the material or character of the pavement of any street or avenue, and in that
86 event the Company shall be bound to replace such pavement in the manner directed by the proper City officer, at its own expense, and the provision as to repairs herein contained shall apply to such renewed or altered pavement.

Twelfth. The Company, so long as it shall continue to use any of the tracks upon the streets and avenues in which said railway shall be constructed, shall cause to be watered at least three (3) times every twenty-four (24) hours when the temperature is above 35 degrees Fahrenheit, the entire width of the streets and avenues, except when the width of such streets and avenues shall exceed sixty (60) feet between curb lines, in which case the Company shall cause to be watered only sixty (60) feet in width of such roadway, and the Company shall provide for such purpose at least one tank car, the capacity of which shall be sufficient to water such streets and avenues in a satisfactory manner.

Provided, however, that the Company may, with the approval of the City officials having jurisdiction over such matters, oil that portion of the surface of the streets and avenues, between the tracks, the rails of the tracks and two (2) feet beyond the rails on either side thereof, at least twice each summer season, in such a manner as may be necessary to prevent the rising of dust, and if the Company shall so oil such portions of the streets and avenues then the Company shall not be required to water such streets and avenues as herein provided.

Thirteenth. The Company, shall at all times keep the streets and avenues upon which the said railway is constructed, between
87 its tracks, the rails of its tracks and for a distance of two (2) feet beyond the rails, on either side thereof, free and clear from ice and snow; provided, however, that the Company shall, at the option of the President of the Borough of Queens, enter into an

agreement for each winter season, or part thereof, to clean an equivalent amount of street surface from house line to house line.

Fourteenth. It is agreed that the right hereby granted to operate a street surface railway shall not be in preference or in hindrance to public work of the City, and should the said railway in any way interfere with the construction of public works in the streets and avenues, whether the same is done by the City directly or by a contractor for the City, the Company shall, at its own expense, protect or move the tracks and appurtenances in the manner directed by the City officials having jurisdiction over such public work.

Fifteenth. The Company hereby agrees that if the City is, or shall become, entitled to acquire, and shall at any time during the term of this contract acquire or otherwise come into the possession of any of the property on which railway tracks shall be constructed on that portion of the route described herein as private property, no compensation shall be awarded for the right to have railway tracks thereon, and in the event that the City shall have acquired such property, then the rights hereby granted in the streets and avenues shall be extended to cover such property and all the terms and conditions of this contract shall be applicable thereto.

88 Sixteenth. The grant of this privilege is subject to whatever right, title or interest the owners of abutting property or others may have in and to the streets and avenues in which the Company is authorized to operate.

Sec. 4. The grant of the right or privilege to operate cars upon two (2) tracks of the Queensboro Bridge and the approaches thereto, upon the route hereinbefore described, and to use other equipment owned by the City upon said bridge, is subject to the following conditions, which shall be complied with by the Company:

First. The said right and privilege shall be held and enjoyed by the Company from the date upon which this contract is signed by the Mayor until May 20, 1919, and may continue for a further term not exceeding in any case fifteen (15) years, which further term may be terminated at the option of the Board at any time during said fifteen (15) years, upon six (6) months' notice by the Board to the Company.

Second. The Company shall use only such tracks as shall be assigned to the Company by the Commissioner of Bridges, and nothing in this contract shall be deemed to affect in any way the right of the City to grant to any individual or other corporation a similar right or privilege upon the same or other terms and conditions, or to affect the right of the Commissioner of Bridges to assign the same or other tracks to such individual or other corporation.

Such tracks and all electrical equipment necessary for the operation of cars thereon shall be installed at the expense of the City, and shall remain the property of the City, but the Company shall keep and maintain such tracks and electrical

equipment in good order and repair, and in such manner as shall be approved and directed by the Commissioner of Bridges, and shall furnish all motive power required by the Commissioner of Bridges for the operation of its cars. If deemed necessary by the Commissioner of Bridges, the Company shall install and operate a system of signals to insure the safe and efficient operation of cars; such system to be approved by the Commissioner of Bridges. In the event of any necessity for changing the layout of tracks, curves, switches, sidings or platforms on the bridge in order to facilitate operation of cars by the Company, said Company must do all the work and furnish all the labor and tools necessary for effecting such changes, which shall all be made under the control and direction of the Commissioner of Bridges, and no such changes or construction connected therewith, or relating thereto, shall be made unless the plan or plans for the same have been first submitted to the Commissioner of Bridges and approved by him.

If, however, the tracks and appliances herein mentioned are used by any other individual or corporation, then the Company shall bear only such proportion of the cost imposed by the terms and conditions of this paragraph as the use of such track and appliances by the Company bears to the entire use of such track and appliances.

Third. Before beginning the operation of the cars, the Company shall file with the Commissioner of Bridges a statement for his approval and assent as to the type of car which it proposes
90 to operate and a sketch showing clearance dimensions, weight on axles and wheel spacing or such other information as may be required by said Commissioner. All cars operated over the bridge by the Company and all equipment and appliances relating to such operation shall be subject at all times to the inspection of the Commissioner of Bridges or his authorized representatives, who shall have power to forbid the entrance to the bridge of cars which may for any reason be unsatisfactory, and who shall have power to direct the removal of any old or inadequate appliance and the substitution therefor of appliances of approved character.

Said Commissioner may adopt rules and regulations in regard to the number of cars to be operated over the bridge, the rate of speed of said cars, the movement and headway thereof, the type and weight of cars to be used and the condition thereof, the switching of cars and the use of platforms and the control of the electrical current used by the Company, and the said Commissioner may alter and amend any such rules and regulations so as to secure the safety and comfort of persons using the bridge and preserve the purposes for which the bridge was constructed, and, upon serving notice upon the Company that such rules and regulations have been made, amended or altered, the Company shall comply with all the requirements thereof.

Fourth. The Company shall furnish and supply a sufficient number of cars (herein called local bridge cars) and commence the operation of same as soon as practicable after this contract is signed by

91 the Mayor, and continue to operate the same during the term of this contract back and forth upon the bridge between the bridge plaza in the Borough of Queens and the bridge approach in the Borough of Manhattan, with such frequency as to provide reasonable accommodations for the traveling public, provided, however, that if the through cars operated by the Company, or the operation of cars across the bridge by any other company, shall in the opinion of the Commissioner of Bridges be sufficient to supply reasonable accommodations for the traveling public, the operation of such local bridge cars shall be discontinued for such period as designated by the Commissioner of Bridges.

Fifth. Nothing in this contract shall be deemed to affect in any way the right of the Commissioner of Bridges to make any alterations or changes in the construction, operation or management of the bridge or to affect in any way the control of such Commissioner over such bridge, as provided by the Charter of the City.

Sec. 5. The grant of the said rights and privileges to construct, maintain and operate a street surface railway from the Queensboro Bridge plaza, at Jackson avenue, in the Borough of Queens, to the intersection of Central avenue and the boundary line between the Borough of Queens and the County of Nassau, upon the route hereinbefore described, and to operate cars upon the Queensboro Bridge and the approaches thereto, are both subject to the following conditions, which shall be complied with by the Company.

First. The Company shall pay to the City for this privilege the following sums of money:

92 (*a*) During the first term of five (5) years an annual sum which shall in no case be less than thirty-five hundred dollars ($3,500) and which shall be equal to three (3) per cent. of its gross annual receipts if such percentage shall exceed the sum of thirty-five hundred dollars ($3,500).

During the second term of five (5) years an annual sum which shall in no case be less than seven thousand dollars ($7,000), and which shall be equal to five (5) per cent. of its gross annual receipts, if such percentage shall exceed the sum of seven thousand dollars ($7,000).

During the third term of five (5) years an annual sum, which shall in no case be less than twelve thousand dollars ($12,000), and which shall be equal to five (5) per cent. of its gross annual receipts, if such percentage shall exceed the sum of twelve thousand dollars ($12,000).

During the remaining term ending May 20, 1934, an annual sum which shall in no case be less than fourteen thousand seven hundred dollars ($14,700), and which shall be equal to five (5) per cent of its gross annual receipts, if such percentage shall exceed the sum of fourteen thousand seven hundred dollars ($14,700).

(*b*) For the use of the bridge structure and approaches thereto, the sum of five cents for each round trip or the sum of two and one-half

cents for each single trip of each and every car operated upon the bridge.

The number of such cars shall be certified by the Commissioner of Bridges to the Comptroller once each month in such form as shall be designated by the Comptroller.

93 (*c*) For the use of the tracks owned by the City upon the bridge and approaches, a sum equal to four (4) per cent per annum upon the valuation of thirty thousand dollars ($30,000) per mile of single track used—provided, however, that if such tracks are used by any other company or companies, then the Company shall pay only such portion of such four (4) per cent per annum upon the cost thereof as shall be proportionate to the use of such tracks by the Company. The Commissioner of Bridges shall compute the sums due the City for the use of such tracks and certify the same to the Comptroller.

(*d*) For the use of terminal loops and other terminal facilities which are the property of the City a sum equal to four (4) per cent upon the cost of the tracks in the terminals, and all overhead equipment necessary for the operation of the cars, provided, however, that if such terminal loops and other terminal facilities are used by any other company or companies, then the Company shall pay only such portion of four (4) per cent per annum upon the cost thereof as shall be proportionate to the use of such facilities by the Company. The Commissioner of Bridges shall compute the sums due the City for the use of such terminal facilities and overhead equipment and certify the same to the Comptroller.

The Company upon the delivery of this contract and before any rights herein conferred are exercised by the Company shall pay to the City the sum of Twenty thousand dollars ($20,000), which sum the City agrees to accept as payment for all sums due the City pursuant to the said contract of May 20, 1909, from the date
94 thereof, to the date hereof, and is the sum the Company agrees to be due the City pursuant to said contract.

The gross annual receipts mentioned above shall be the gross earnings of the Company from all sources within the limits of the City.

The annual charges shall commence from the date upon which this contract is signed by the Mayor.

All annual charges as above shall be paid into the treasury of the City on November 1 of each year, and shall be for the amount due to September 30 next preceding. Provided that the first annual payment shall be only for that proportion of the first annual charge as the time between the date upon which this contract is signed by the Mayor and September 30 following, shall bear to the whole of one year.

Whenever the percentage required to be paid shall exceed the minimum amount as above, then such sum over and above such minimum shall be paid on or before November 1 in each year for the year ending September 30 next preceding.

The annual charges herein provided are intended to include the percentages of gross receipts now required to be paid by railway companies to the City pursuant to the Railroad Law as amended.

Any and all payments to be made by the terms of this contract to the City by the Company shall not be considered in any manner in the nature of a tax, but such payments shall be in addition to any and all taxes of whatsoever kind or description now or hereafter required to be paid by any ordinance of the City or by any law of the State of New York.

95 Second. The annual charges or payments shall continue throughout the whole term of this contract, whether original or renewal, notwithstanding any clause in any statute or in the charter of any other railway or railroad company providing for payment for railway or railroad rights or franchises at a different rate, and no assignment, lease or sublease of the rights or privileges hereby granted, whether original or renewal, or of any part thereof, or of any of the routes mentioned herein, or of any part thereof, shall be valid or effectual for any purpose unless the said assignment, lease or sublease shall contain a covenant on the part of the assignee or lessee that the same is subject to all the conditions of this contract; and that the assignee or lessee assumes and will be bound by all of said conditions and especially said conditions as to payments anything in any statute or in the charter of such assignee or lessee to the contrary notwithstanding, and that the said assignee or lessee waives any more favorable conditions created by such statute or its charter, and that it will not claim by reason thereof or otherwise exemption from liability to perform each and all of the conditions of this contract.

Third. The rights and privileges hereby granted shall not be assigned, either in whole or in part, or leased or sublet in any manner, nor shall the title thereto, or right, interest or property therein, pass to or vest in any other person or corporation whatsoever, either by the act of the Company, or by operation of law, whether under the provisions of the statutes relating to the consolidation or merger of corporations or otherwise, without the consent of the City,
96 acting by the Board, evidenced by an instrument under seal, anything herein contained to the contrary thereof in anywise notwithstanding, and the granting, giving or waiving of any one or more of such consents shall not render unnecessary any subsequent consent or consents.

Fourth. Said railway shall be constructed and operated in the latest approved manner of street railway construction and operation, and it is hereby agreed that the Board may require the Company to improve or add to the railway equipment, including rolling stock and railway appurtenances, from time to time, as such additions and improvements are necessary, in the opinion of the Board. Upon failure on the part of the Company to comply with the direction of the Board within a reasonable time, the rights hereby granted shall cease and determine.

Fifth. The rate of fare for any passenger upon said railway shall not exceed five (5) cents, and the Company shall not charge any passenger more than five (5) cents for one continuous ride from any point on said railway, or a line or branch operated in connection therewith, to any point thereof, or of any connecting line or branch thereof, within the limits of the City.

The rate of fare upon the local bridge cars, or the through cars of the Company, entitling a passenger to ride once across the bridge shall not exceed three cents, and the Company shall at all times have tickets on sale, one of which shall entitle a passenger to ride across said bridge, and the Company shall sell such tickets at the rate of not exceeding three cents for one and five cents for two.

97 The Company shall carry free upon the railway hereby authorized during the term of this contract all members of the Police and Fire Departments of the City, when such employees are in full uniform.

Sixth. No cars shall be operated upon the railway hereby authorized, other than passenger cars, cars for the transportation of express matter and cars necessary for the repair of maintenance of the railway, and no freight cars shall be operated upon the tracks of said railway.

The rate for the carrying of such property over the said railway upon the cars of the Company shall in all cases be reasonable in amount, subject to the control of the Board, and may be fixed by the Board after notice to the Company, and a hearing had thereon, and when so fixed such rates shall be binding upon the Company, and no greater sums shall be charged for such service than provided for by it.

Seventh. All cars operated on said railway shall be lighted by electricity, or by some lighting system equally efficient, or as may be required by resolution of the Board.

Eighth. Cars on the said railway shall run at intervals of not more than thirty (30) minutes both day and night, and as much oftener as reasonable convenience of the public may require, as may be determined by the Board. Provided, however, that the Company, during the first five (5) years of this contract, shall not be required to operate its cars between the hours of one (1) o'clock a. m. and five o'clock a. m. each day unless the Board shall determine after a hearing had thereon that public convenience

98 requires the operation of cars during said hours.

Ninth. The Company shall attach to each car run over the said railway proper fenders and wheel guards, in conformity with such laws and ordinances as are now in force, or may hereafter, during the term of this contract, be enacted or adopted by the State or City authorities, or as may be required by resolution of the Board.

Tenth. All cars which are operated on said railway shall be heated during the cold weather, in conformity with such laws and ordinances as are now in force, or may hereafter, during the term of

this contract, be enacted or adopted by the State or City authorities, or as may be required by resolution of the Board.

Eleventh. The Company shall submit to the Board a report not later than November 1 of each year for the year ending September 30 next preceding, and at any other time, upon request of the Board, which shall state:

1. The amount of stock issued, for cash, for property.

2. The amount paid in as by last report.

3. The total amount of capital stock paid in.

4. The funded debt by last report.

5. The total amount of funded debt.

6. The floating debt as by last report.

7. The total amount of floating debt.

8. The total amount of funded and floating debt.

9. The average rate per annum of interest on funded debt.

10. Statement of dividends paid during the year.

11. The total amount expended for same.

12. The names of the directors elected at the last meeting of the corporation held for such purpose.

13. Location, value and amount paid for real estate owned by the Company as by last report.

14. Location, value and amount paid for real estate now owned by the Company.

15. Number of passengers carried during the year.

16. Total receipts of Company for each class of business.

17. Amounts paid by the Company for damage to persons or property on account of construction and operation.

18. Total expenses for operation, including salaries.

—and such other information in regard to the business of the Company as may be required by the Board.

Twelfth. The Company shall at all times keep accurate books of account of the gross earnings from all sources within the limits of the city, and shall, on or before November 1 of each year, make a verified report to the Comptroller of the City of the business done by the Company for the year ending September 30 next preceding, in such form as he may prescribe. Such report shall contain a statement of such gross earnings, the total miles in operation within the limits of the city and the miles of

railway constructed and operated under this contract, and such other information as the Comptroller may require. The Comptroller shall have access to all books of the Company for the purpose of ascertaining the correctness of its report, and may examine its officers under oath.

Thirteenth. In case of any violation or breach or failure to comply with any of the provisions herein contained, this contract may be forfeited by a suit brought by the Corporation Counsel on notice of ten (10) days to the Company, or at option of the Board by resolution of said Board, which said resolution may contain a provision to the effect that the railway constructed and in use by virtue of this contract shall thereupon become the property of the City without proceedings at law or in equity. Provided, however, that such action by the Board shall not be taken until the Board shall give notice to the Company to appear before it on a certain day, not less than ten (10) days after the date of such notice, to show cause why such resolution declaring the contract forfeited should not be adopted. In case the Company fails to appear, action may be taken by the Board forthwith.

Fourteenth. If the Company shall fail to give efficient public service at the rates herein fixed, or fail to maintain its structures and equipment as herein provided in good condition throughout the whole term of this contract, the Board may give notice to the Company specifying any default on the part of the Company, and requiring the Company to remedy the same within a reasonable time; and upon failure of the Company to remedy such default within a reasonable time, the Company shall, for each day thereafter during which the default or defect remains, pay to the City the sum of two hundred and fifty dollars ($250) as fixed or liquidated damages, or the Board, in case such structures or equipment which may affect the surface of the streets shall not be put in good condition within a reasonable time after notice by the Board as aforesaid shall have the right to make all needed repairs at the expense of the Company, in which case the Company shall pay to the City the amount of the cost of such repairs, with legal interest thereon, all of which sums may be deducted from the fund hereinafter provided for.

Fifteenth. The Company shall assume all liability to persons or property by reason of the construction or operation of the railway authorized by this contract, and it is a condition of this contract that the City shall assume no liability whatsoever to either persons or property on account of the same, and the Company hereby agrees to repay to the City any damages which the City shall be compelled to pay by reason of any acts or default of the Company.

Sixteenth. This grant is upon the express condition that the Company shall, before anything is done in exercise of the rights conferred hereby, and at all times thereafter during the term of this contract have on deposit with the Comptroller of the City the sum of twenty thousand dollars ($20,000), either in money

or securities, to be approved by him, which fund shall be security for the performance by the Company of all of the terms and conditions of this contract, especially those which relate to the payment of the annual charges for the privilege hereby granted, the efficiency of the public service rendered, the repairs of the street pavement, the removal of snow and ice and the quality of construction of the railway, and in case of default in the performance by the Company of such terms and conditions the City shall have the right to cause the work to be done and the materials to be furnished for the performance thereof after due notice, and shall collect the reasonable cost thereof from the said fund without legal proceedings; or after default in the payment of the annual charges, shall collect the same, with interest, from the said fund after ten (10) days' notice in writing to the Company; or in case of failure to keep the said terms and conditions of this contract relating to the headway, heating and lighting of cars, fenders, wheel-guards and watering of street pavements, the Company shall pay a penalty of fifty dollars ($50) per day for each day of violation, and the further sum of ten dollars ($10) per day for each car that shall not be properly heated, lighted or supplied with fenders or wheel-guards, in case of the violation of the provisions relating to those matters; all of which sums may be deducted from said fund.

The procedure for the imposition and collection of the penalties in this contract shall be as follows:

The Board, on complaint made, shall give notice to the
103 Company, directing its President, or other officer, to appear before the Board on a certain day not less than ten (10) days after the date of such notice, to show cause why the Company should not be penalized in accordance with the foregoing provisions. If the Company fails to make an appearance, or, after a hearing appears in the judgment of the Board to be in fault, said Board shall forthwith impose the prescribed penalty, or where the amount of the penalty is not prescribed herein, such amount as appears to the Board just, and without legal procedure direct the Comptroller to withdraw the amount of such penalty from the security fund deposited with him. In case of any drafts made upon the security fund the Company shall, upon ten (10) days' notice in writing, pay to the City a sum sufficient to restore said security fund to the original amount of twenty thousand dollars ($20,000), and in default thereof this contract shall be canceled and annulled at the option of the Board, acting in behalf of the City. No action or proceeding or right under the provisions of this contract shall affect any other legal rights, remedies or causes of action belonging to the City.

Seventeenth. The Company upon the delivery of this contract and before anything is done in exercise of the rights conferred hereby, shall deposit with the Comptroller of the City a further sum of Thirty Thousand (30,000) dollars either in money or securities to be approved by him, fifteen thousand (15,000) dollars of which shall be returned to the Company only upon the condition that the Company shall have completed the construction of a double track street surface

railway and placed the same in operation from the Man-
104 hattan Terminal of the Queensboro Bridge to the intersection of the tracks of the Long Island Railroad Company with Thomson Avenue, at or near Greenpoint Avenue, and from said Greenpoint Avenue to the intersection of Thomson Avenue with Broadway and from the intersection of Thomson Avenue with Broadway to the proposed new Long Island Railroad Station in the former Village of Jamaica, on or before the dates herein elsewhere specified for the completion of the construction of those portions of the railway, and the remaining fifteen thousand (15,000) dollars shall be returned to the Company only upon the condition that the Company shall have completed the construction of the railway and placed the same in operation from the said proposed new Long Island Railroad station to the intersection of Central Avenue and the City Line, within the time herein elsewhere specified for the completion of that portion of the railway.

The sum of thirty thousand dollars ($30,000) provided for in this paragraph is to be in addition to any sum already deposited by the Company with the Comptroller of the City of New York under the provisions of paragraph Seventeenth of the contract of May 20, 1909, the respective rights of the City and of the Company in the sum so deposited under said contract being left for future adjustment through judicial proceedings or otherwise.

For the purpose of facilitating the work of the Company in constructing and putting in operation said section of its railway, it is hereby consented that the Company may construct its temporary overhead crossings on Thomson Avenue within the lines of said avenue.

105 If and when any of such portions of the railway shall be constructed and put in operation at any time within the periods herein specified, a certificate stating that such portion of the railway has been constructed and put in operation shall be prepared by the President of the Company, and delivered to the Board, and the Board shall immediately verify the correctness of such statement, and either accept such statement as correct, or, if it deems it to be incorrect, return said certificate to the Company, specifying in writing the respects in which it deems such statement to be incorrect. If such statement or statements, with respect to the portions of the railway hereinabove referred to, which are required to be constructed and placed in operation within specified periods, as a condition of the return of said portions of the said sum of thirty thousand dollars ($30,000), are filed with the Board within said specified periods and are found by the Board to be correct or are thereafter proven to be correct, the Board shall thereupon adopt a resolution directing the Comptroller to return to the Company the said portions of said thirty thousand dollars ($30,000) as herein provided. Unless such certificate or certificates are delivered to the Board by the Company and the statement therein contained accepted by said Board as correct or proven by the Company to be correct, then such sum of thirty thousand dollars ($30,000) or such portion thereof as shall not have already been returned to the Company, as herein provided, shall be forfeited to and become the property of the City.

Eighteenth. Nothing herein contained shall be construed to constitute a waiver of any forfeiture of money which has accrued
106 under the contract between the City and the Company dated May 20, 1909.

Nineteenth. The words "notice" or "direction," wherever used in this contract, shall be deemed to mean a written notice or direction. Every such notice or direction to be served upon the Company shall be delivered at such office in the City as shall have been designated by the Company, or if no such office shall have been designated, or if such designation shall have for any reason become inoperative, shall be mailed in the City, postage prepaid, addressed to the Company at the City. Delivery or mailing of such notice or direction as and when above provided shall be equivalent to direct personal notice or direction, and shall be deemed to have been given at the time of delivery or mailing.

Twentieth. The words "streets or avenues" and "streets and avenues" whenever used in this contract shall be deemed to mean "streets, avenues, highways, parkways, driveways, concourses, boulevards, bridges, viaducts, tunnels, public places or any other property to which the City has title" encountered in the route hereinabove described and upon or in which authority is hereby given to the Company to construct a railway.

Twenty-first. If at any time the powers of the Board or any other of the authorities herein mentioned or intended to be mentioned, shall be transferred by law to any other board, authority, officer or officers, then and in such case such other board, authority, officer or officers, shall have all the powers, rights and duties herein reserved to or prescribed for the Board or other authorities, officer or officers.

107 Sec. 6. This grant is also upon the further and express condition that the provisions of the Railroad Law, pertinent hereto, shall be strictly complied with by the Company.

Sec. 7. The Company promises, covenants and agrees on its part and behalf to conform to and abide by and perform all the terms, conditions and requirements in this contract fixed and contained.

In witness whereof, the party of the first part, by its Mayor, thereunto duly authorized by the Board of Estimate and Apportionment of said City, has caused the corporate name of said City to be hereunto signed and the corporate seal of said City to be hereunto affixed; and the party of the second part, by its officers, thereunto duly authorized, has caused its corporate name to be hereunto signed and its corporate seal to be hereunto affixed, the day and year first above written.

THE CITY OF NEW YORK,
By W. J. GAYNOR,
[CORPORATE SEAL.] *Mayor.*

Attest:
P. J. SCULLY,
City Clerk.

SOUTH SHORE TRACTION COMPANY,
By WILLARD V. KING,
Receiver;
By PAUL T. BRADY,
Receiver;
By PAUL T. BRADY,
[SEAL.] *Vice-President.*

Attest:
ARTHUR C. HUME.
Secretary.

108 STATE OF NEW YORK,
County of New York,
City of New York, ss:

On the 29th day of Oct. 1912, before me personally came W. J. Gaynor, to me known, who being by me duly sworn, did depose and say that he resided at No. 20 Eighth Avenue, in the Borough of Brooklyn, City of New York; that he was the Mayor of the City of New York, the municipal corporation described in and which executed the above instrument; that he knew the corporate seal of the City of New York; that the seal affixed to said instrument was said corporate seal; that it was so affixed under and by virtue of the authority conferred on deponent by the Board of Estimate and Apportionment of the said City of New York, and that he signed his name thereto by virtue of like authority.

J. G. CONLON,
Com. of Deeds, No. 80, N. Y. C.

STATE OF NEW YORK,
County of New York,
City of New York, ss:

On the 30th day of October, 1912, before me personally came P. J. Scully, to me known, who, being by me duly sworn, did depose and say that he resided at No. 4 Columbia Street, in the Borough of Manhattan, City of New York; that he was the City Clerk of the City of New York, the municipal corporation described in and which executed the above instrument; that he knew the corporate
109 seal of the City of New York; that the seal affixed to said instrument was such corporate seal; that it was so affixed under and by virtue of the authority conferred on him by the Board of Estimate and Apportionment of the said City of New York, and that he signed his name thereto by virtue of like authority.

And further that he knew and was acquainted with W. J. Gaynor and knew him to be the person described in and who as Mayor of the City of New York executed the above instrument. That he saw

him subscribe, execute and deliver the same, and that he acknowledged to him, the said P. J. Scully, that he executed and delivered the same, and he, the said P. J. Scully, thereupon subscribed his name thereto.

CHAS. A. GLASER,
Commissioner of Deeds, New York City.

STATE OF NEW YORK,
County of New York,
City of New York, ss:

On this twenty-ninth day of October, 1912, before me personally came Paul T. Brady and Willard V. King, to me known and known to me to be the Receivers of the South Shore Traction Company, the corporation described in and which executed the above instrument, and they severally duly acknowledged to me that they executed the same as such Receivers for the uses and purposes therein specified.

[SEAL.] F. ANGELOCH,
Notary Public, New York County, #83.

Certificate filed in Kings County.

110 STATE OF NEW YORK,
County of New York,
City of New York, ss:

On the 29th day of October, 1912, before me personally came Paul T. Brady, to me known, who being by me duly sworn did depose and say that he resided in Palisade, Bergen County, State of New Jersey; that he was Vice-President of the South Shore Traction Company, the corporation described in and which executed the above instrument; that he knew the seal of the said corporation; that the seal affixed to said instrument was said corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name thereto by like order.

F. ANGELOCH,
Notary Public, New York County, #83. [SEAL.]

Certificate filed in Kings County.

STATE OF NEW YORK,
County of New York,
City of New York, ss:

On the 29th day of October, 1912, before me personally came Arthur C. Hume, to me known, who, being by me duly sworn, did depose and say that he resided at No. 1 West 30th Street, in the Borough of Manhattan, City of New York; that he was Secretary of the South Shore Traction Company, the corporation described in and which executed the above instrument; that he knew the seal

of said corporation; that the seal affixed to said instrument
111 was said corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

F. ANGELOCH,
Notary Public, New York County, #83.

Certificate filed in Kings County.

[SEAL.]

Approved as to form,
G. L. STERLING,
Acting Corporation Counsel.

At a Stated Term of the District Court of the United States for the Eastern District of New York Held in the Federal Building, Brooklyn, New York, on the 11th day of July, 1912.

Present: Hon. Thomas I. Chatfield, U. S. D. J., holding the Court.

PAUL T. BRADY, Complainant,

against

SOUTH SHORE TRACTION COMPANY, Defendant.

On the 10th day of July, 1912, the petition of Paul T. Brady and Willard V. King, Receivers of the South Shore Traction Company, having duly come on to be heard, and the said Receivers hav-
112 ing appeared by their solicitors, Gifford, Hobbs & Beard, Esqs., and the South Shore Traction Company having appeared by Arthur C. Hume, Esq., its solicitor, said parties being all the parties who have appeared in this action, and having duly consented to the entry of an order as prayed for by said petitioners in said petition, and it appearing from said petition, duly verified the 10th day of July, 1912, and now on file in this Court, that by an order of this Court dated May 1st, 1912, the action of the petitioners herein in entering into certain contracts, copies of which were attached to the petition on which said order was granted, was duly ratified and approved, which said contracts, together with the general plan shown in said petition, provided for the sale and assignment of all the assets and franchise rights now held by the South Shore Traction Company within the City of New York to a domestic street railroad corporation incorporated under the corporate name of the Manhattan and Jamaica Railway Company, and also provided for an application to be made to the Board of Estimate and Apportionment of the City of New York for a modification in the existing New York City franchise of the South Shore Traction Company: and it further appearing that, acting upon the authority contained in said order, the petitioners herein duly applied to the Board of Estimate and Apportionment of the City of New York for the modi-

fication of the existing franchise of the South Shore Traction Company, and that after compliance with all the provisions of law relating to such applications a proposed form of contract modifying and amending the present existing franchise of the South
113 Shore Traction Company has been prepared and is now appearing upon the minutes of said Board and being published as required by law and that a final hearing will be held by the Board of Estimate and Apportionment upon the 15th day of July, 1912, at which time it is expected that a resolution will be passed awarding and granting to the South Shore Traction Company said modified franchise in the form attached to the petition herewith submitted and marked Exhibit "A," and it further appearing that it is to the best interests of the trust estate, of which the petitioners were appointed Receivers, that said franchise when so amended should be duly executed on behalf of said South Shore Traction Company, and when so executed by said Company should be assigned to the Manhattan and Jamaica Railway Company in pursuance of the terms and provisions of the contracts heretofore approved by this Court;

Now, therefore, it is, on motion of Gifford, Hobbs & Beard, Solicitors for said petitioners,

Ordered, that the prayer of said petitioners, as the same is contained in said petition, be and the same hereby is granted and that the petitioners herein be and they hereby are authorized to execute, acknowledge and deliver on behalf of the South Shore Traction Company a contract with the City of New York for the right and privilege to construct, maintain and operate said surface railroad with the necessary wires and equipment for the purpose of doing a general street railroad business in the Boroughs of Manhattan and Queens, in the City of New York, upon the route described in the proposed contract annexed to the petition duly made, verified
114 and filed by your petitioners herein in the form or substantially in the form of the proposed contract annexed to the said petition. And it is

Further ordered, that upon the due execution and delivery of said contract or franchise your petitioners be authorized to duly assign and transfer to the Manhattan and Jamaica Railroad Company said contract or franchise with the City of New York on behalf of the South Shore Traction Company in pursuance of the authority vested in the petitioners herein under and by virtue of the order of this Court dated the 1st day of May, 1912.

THOMAS I. CHATFIELD,
U. S. D. J.

EASTERN DISTRICT OF NEW YORK, *ss:*

I, Richard P. Morle, Clerk of the District Court of the United States for the Eastern District of New York, do hereby certify that the foregoing is a true copy of an original order on file and remaining of record in my office.

In testimony whereof, I have caused the Seal of said Court to be hereunto affixed, at the Borough of Brooklyn, in the Eastern District of New York, this 15th day of July in the year of our Lord one thousand nine hundred and twelve and of the independence of the United States the one hundred and thirty-sixth.

RICHARD P. MORLE,
Clerk,

[L. S.] By J. C. COCHRAN,
Deputy Clerk.

115 *Contract, Dated July* 21, 1913, *Between The City of New York and Manhattan and Queens Traction Corporation, Amending Contract of October* 29, 1912.

The City of New York and Manhattan and Queens Traction Corporation.

Extensions Campion Avenue and Archer Place and Van Dam Street and Nott Avenue, Borough of Queens.

Contract.

Dated July 21, 1913.

Authorized by Board of Estimate and Apportionment July 3, 1913, and Approved by the Mayor July 3, 1913.

This Contract, made this 21st day of July, 1913, by and between The City of New York (hereinafter called the City) party of the first part, by the Mayor of said City, acting for and in the name of said City, under and in pursuance of the authority of the Board of Estimate and Apportionment of said City (hereinafter called the Board) and the Manhattan and Queens Traction Corporation (hereinafter called the Corporation) party of the second part, witnesseth:

116 Whereas, The Board did by resolution adopted July 15, 1912, and approved by the Mayor July 16, 1912, authorize the execution and delivery of a contract granting the South Shore Traction Company, the right to construct, maintain and operate a street surface railway from the Manhattan approach to the Queensboro Bridge, upon, along and over said bridge and its approaches to the Borough of Queens, and upon and along Thomson Avenue, Hoffman Boulevard and other streets and avenues in the Borough of Queens, to the boundary line between the City of New York and the County of Nassau; and

Whereas, Said contract was executed by the Receivers, the Vice-President and the Secretary of the South Shore Traction Company on October 29, 1912, and by the Mayor and City Clerk on October 29 and October 30, 1912, respectively, and bears date of October 29, 1912; and

Whereas, The Board by resolution adopted November 21, 1912, and approved by the Mayor November 22, 1912, granted its consent to the South Shore Traction Company, to assign, transfer and set over all rights and privileges granted by said contract dated October 29, 1912, so that the same should pass to and vest in the Manhattan and Queens Traction Corporation; and

Whereas, The Corporation has by a petition dated April 17, 1913, applied to the Board for certain modifications and amendments in and to said contract dated October 29, 1912, to wit:

First. For a single track extension to its existing route upon and along Campion Avenue or street from Carll Street to Archer
117 Place or street, and thence by double track upon and along Archer Place or street to private property.

Second. For a double track extension to its existing route upon and along Van Dam Street, from a point at or near its intersection with Thomson Avenue to a point 300 feet southerly from the southerly side of Nott Avenue, together with a double track from the intersection of Van Dam Street and Nott Avenue, upon and along Nott Avenue to a point 90 feet westerly from the westerly side of Van Dam Street. Now, Therefore, in consideration of the mutual covenants and agreements herein contained, the parties hereto do hereby covenant and agree as follows:

Section 1. The City hereby consents, subject to the conditions and provisions hereinafter set forth, to the modifications and amendments in and to said contract dated October 29, 1912; said modifications and amendments to be as follows:

1. So much of Section 2-First of said contract reading as follows:

"Thence by single track in and upon Rose Avenue to Archer Place and by single track in and upon Campion Avenue to Carll Street; thence by single track in and upon Archer Place to private property,"

is hereby stricken out, and the following substituted therefor:

"Thence by single track in and upon Rose Avenue to Archer Place or street, and by single track in and upon Campion Avenue
or street to Archer Place or street; thence by single track in
118 and upon Archer Place or street from Rose Avenue to Campion Avenue or street, and by double track in and upon Archer Place or street from Campion Avenue or street to private property."

2. Section 2-First, of said contract is hereby further amended by adding at the end of the description of the route, as contained therein, after the words

"To a point where Central Avenue intersects the boundary line between the City of New York and the County of Nassau."

a new paragraph reading as follows:

"Also beginning at and connecting with the existing tracks of the Corporation on Diagonal street leading from Queensboro Bridge to Thomson Avenue at or near the intersection of said Diagonal street with Van Dam Street; thence southerly by double track upon and along Van Dam street to a point in said street not over 300 feet south of the southerly side of Nott Avenue; also by double track from the intersection of Nott Avenue and Van Dam Street westerly upon and along said Nott Avenue to a point in said avenue not over 90 feet westerly from the westerly side of said Van Dam Street."

The said extensions with turnouts, switches and crossovers, hereby authorized, are shown upon a map entitled:

"Map showing proposed extensions of route of franchise of Manhattan and Queens Traction Corporation to accompany petition dated April 17, 1913, to the Board of Estimate and Apportionment,"

119 and signed and certified by Robert S. Sloan, President, and Harold B. Weaver, Chief Engineer, a copy of which is attached hereto, is to be deemed a part of this contract, is to be construed with the text thereof, and is to be substantially followed, provided that deviations therefrom and additional turnouts, swi-ches and crossovers which are consistent with the foregoing description and the other provisions of this contract may be permitted by resolution of the Board.

(Map referred to is No. 3 in Vol. II—Exhibits—hereof.)

Section 2. The grant of this privilege is subject to the following conditions:

First. All the terms, provisions and conditions contained in the said contract dated October 29, 1912, excepting those which are herein amended or modified, shall remain unchanged and shall apply to the routes herein described in Section 1 of this contract, with the same force and effect as when they applied to the route described in said contract dated October 29, 1912, and as though the routes herein described had been specifically described in said contract.

Second. The Corporation upon the delivery of this contract and before anything is done in exercise of the rights conferred hereby, shall pay to the City as compensation for the privilege hereby granted the sum of One hundred dollars ($100) in cash.

Third. The Corporation promises, covenants and agrees on its part and behalf to conform to and abide by and perform all the terms and conditions and requirements in this contract fixed and contained.

120 In witness whereof, the party of the first part, by its Mayor thereunto duly authorized by the Board of Estimate and Apportionment, of said City, has caused the corporate name of said City to be hereunto signed and the corporate seal of said City to be hereunto affixed and the party of the second part, by its officers

thereunto duly authorized, has caused its corporate name to be hereunto signed and its corporate seal to be hereunto affixed the day and year first above written.

THE CITY OF NEW YORK,
By W. J. GAYNOR,
Mayor.

[Corporate Seal.]

Attest:
P. J. SCULLY,
City Clerk.

MANHATTAN AND QUEENS TRACTION CORPORATION,
By ROBERT S. SLOAN,
President.

[SEAL.]

Attest:
LEONARD E. LISNER,
Assistant Secretary.

121 STATE OF NEW YORK,
County of New York,
City of New York, ss:

On the 21 day of July, 1913, before me personally came W. J. Gaynor, to me known, who being by me duly sworn, did depose and say that he resided at No. 20 Eighth Avenue, in the Borough of Brooklyn, City of New York; that he was the Mayor of the City of New York, the municipal corporation described in and which executed the above instrument; that he knew the corporate seal of the City of New York; that the seal affixed to said instrument was said corporate seal; that it was so affixed under and by virtue of the authority conferred on deponent by the Board of Estimate and Apportionment of the said City of New York, and that he signed his name thereto by virtue of like authority.

T. F. CASEY,
Com. of Deeds #51, N. Y. City.

STATE OF NEW YORK,
County of New York,
City of New York, ss:

On the 22 day of July, 1913, before me personally came P. J. Scully, to me known, who, being by me duly sworn, did depose and say: that he resided at No. 4 Columbia Street, in the Borough of Manhattan, City of New York; that he was the City Clerk of the City of New York, the municipal corporation described in and which executed the above instrument; that he knew the corporate seal of the

City of New York; that the seal affixed to said instrument was
122 such corporate seal; that it was so affixed under and by virtue of the authority conferred on him by the Board of Estimate and Apportionment of the said City of New York, and that he signed his name thereto by virtue of like authority.

And further, that he knew and was acquainted with W. J. Gaynor, and knew him to be the person described in and who, as Mayor of the City of New York, executed the above instrument; that he saw him subscribe, execute and deliver the same, and that he acknowledged to him, the said P. J. Scully, that he executed and delivered the same, and he, the said P. J. Scully, thereupon subscribed his name thereto.

CHAS. A. GLASER,
Commissioner of Deeds, N. Y. City, Residing in N. Y.

County Register's Nos. N. Y. 15022, Kings 5019.
County Clerk's, N. Y. 110, Queens 152.

STATE OF NEW YORK,
County of New York,
City of New York, ss:

On the 12th day of July, 1913, before me personally came Robert S. Sloan, to me known, who being by me duly sworn, did depose and say that he resided in the Borough of Queens, City of New York; that he was President of the Manhattan and Queens Traction Corporation, the corporation described in and which executed the above instrument; that he knew the seal of the said corporation; that the seal affixed to said instrument was said corporate seal; that it was
123 so affixed by order of the Board of Directors of the said corporation, and that he signed his name thereto by like order.

HARRIET C. THIRKIELD,
Notary Public, Kings County, No. 149. [SEAL.]

Certificate filed in New York County, No. 47.
New York Register, No. 5117.

STATE OF NEW YORK,
County of New York,
City of New York, ss:

On the 12th day of July, 1913, before me personally came Leonard E. Lisner, to me known, who being by me duly sworn, did depose and say that he resided in the Borough of Manhattan, City of New York; that he was Assistant Secretary of the Manhattan and Queens Traction Corporation, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was said corporate seal; that

it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

HARRIET C. THIRKIELD,
[SEAL.] *Notary Public, Kings County, No.* 149.

Certificate filed in New York County No. 47.
New York Register No. 5117.

Approved as to form:
LOUIS H. HAHLO,
Acting Corporation Counsel.

124 *Contract, Dated January* 21, 1916, *Between The City of New York and the Manhattan and Queens Traction Corporation Amending Contract of October* 29, 1912.

The City of New York

and

Manhattan & Queens Traction Corporation.

Amendment of Contract, Dated October 29, 1912, Between the City of New York and the South Shore Traction Company, assigned to the Manhattan and Queens Traction Corporation, consented to by the City of New York, and as amended by contract dated July 21, 1913, granting the company a franchise for a street surface railway in the Borough of Queens, together with the right to operate on the Queensboro bridge.

Contract, Dated January 21, 1916, and Resolution Authorizing Execution of Same.

Approved Resolution No. 81.

Board of Estimate and Apportionment, City of New York.

Resolved, That the Board of Estimate and Apportionment hereby consents to certain modifications in the terms and conditions
125 of the said contract of October 29, 1912, such modified terms and conditions being fully set forth and described in the following form of proposed contract for the grant thereof, embodying such terms and conditions as modify or alter said contract of October 29, 1912, which said contract otherwise remains unchanged as to all the other terms and conditions expressed therein, and that the Mayor of The City of New York be and he hereby is authorized to execute and deliver such contract in the name and on behalf of The City of New York as follows, to wit:

(Here follows contract as on following pages.)

A true copy of resolution adopted by the Board of Estimate and Apportionment December 17, 1915.

JAMES D. McGANN,
Assistant Secretary.

The foregoing resolution is hereby approved.

JOHN PURROY MITCHEL,
Mayor.

Dated, New York, December 18, 1915.

This contract, made and executed in duplicate, this 21st day of January, 1916, by and between The City of New York (hereinafter called the City), party of the first part, by the Mayor of said City, acting for and in the name of said City, under and in pursuance of the authority of the Board of Estimate and Apportionment of said City (hereinafter called the Board) and the Manhattan and
126 Queens Traction Corporation (hereinafter called the Corporation), party of the second part, witnesseth:

Whereas, By a contract dated October 29, 1912, the South Shore Traction Company (hereinafter called the Company) was granted the right to construct, maintain and operate a street surface railway from the Manhattan approach to the Queensboro Bridge, upon, along and over said bridge and its approaches to the Borough of Queens, and upon and along Thomson Avenue, Hoffman Boulevard and other streets and avenues in the Borough of Queens, to the boundary line between the City of New York and the County of Nassau; and

Whereas, Section 3, Seventh, of said contract dated October 29, 1912, provided for the completion and placing in operation of that portion of the railway therein authorized between the Manhattan terminal of the Queensboro Bridge and the Long Island Railroad station in the former Village of Jamaica on or before certain specified dates and that the remaining portion of said railway between the former Village of Jamaica and the City Line at Central Avenue should be completed and placed in operation within six (6) months after notification by the President of the Borough that he is willing to issue a permit for the construction of tracks on the streets involved; and

Whereas, The Board by resolution approved by the Mayor October 31, 1912, granted the Company extensions of time within which to complete and put in operation certain portions of the railway authorized by said contract dated October 29, 1912, as follows:
127 To and including January 29, 1913, for the portion between the Manhattan terminal of the Queensboro Bridge and the intersection of the tracks of the Long Island Railroad with Thomson Avenue at or near Greenpoint Avenue; to and including March 31, 1913, for the portion between the intersection of Thomson and Greenpoint Avenues and the intersection of Thomson Avenue and Broadway; to and including June 29, 1913, for the portion between the intersection of Thomson Avenue and Broadway and the proposed new Long Island Railroad station, in the former Village of Jamaica; and

Whereas, The Board by resolution adopted November 21, 1912, and approved by the Mayor November 22, 1912, granted consent to the South Shore Traction Company to assign, transfer and set over all rights and privileges granted by said contract dated October 29, 1912, so that the same should pass to and vest in the Manhattan and Queens Traction Corporation; and

Whereas, Such assignment of said rights and privileges was subsequently made; and

Whereas, The Board by resolution approved by the Mayor January 28, 1913, granted the Corporation an extension of time to and including February 13, 1913, within which to complete and put in operation that portion of the railway authorized by said contract dated October 29, 1912, between the Manhattan terminal of the Queensboro Bridge and the intersection of the Long Island Railroad with Thomson Avenue at or near Greenpoint Avenue; and

Whereas, The Board by resolution approved by the Mayor
128 March 28, 1913, granted the Corporation an extension of time to and including April 30, 1913, within which to complete and put in operation that portion of the railway authorized by said contract dated October 29, 1912, between the intersection of the Long Island Railroad with Thomson Avenue at or near Greenpoint Avenue and the intersection of Thomson Avenue and Broadway; and

Whereas, The Board by resolution approved by the Mayor June 23, 1913, granted the Corporation ar extension of time to and including September 30, 1913, within which to complete and put in operation that portion of the railway authorized by said contract dated October 29, 1912, between Thomson Avenue and Broadway and the Long Island Railroad station in the former Village of Jamaica; and

Whereas, By a contract dated July 21, 1913, Section 2, First, of said contract dated October 29, 1912, was amended; and

Whereas, The Board, by resolutions approved by the Mayor September 30, 1913, and December 26, 1913, respectively, granted the Corporation extensions of time to and including January 31, 1914, within which to complete and put in operation that portion of the railway authorized by said contract dated October 29, 1912, between Thomson Avenue and Broadway and the Long Island Railroad station in the former Village of Jamaica; and

Whereas, Section 3, Eighth, of said contract dated October 29,
1912, provided that the railway therein authorized should not
129 cross any railway or railroad other than street surface railways encountered in its route at grade; and

Whereas, The Corporation has, by a petition dated October 19, 1915, applied to the Board for certain amendments in and to said Section 3, Seventh and Eighth of said contract of October 29, 1912, as follows:

(a) By striking out in said Section 3, Seventh, so much of said paragraph relating to the completion of construction of that portion of the railway between the former Village of Jamaica and the City Line within six (6) months after notification by the President of the Borough that he is willing to issue a permit for the construction

of tracks on the streets involved and inserting in lieu thereof a provision requiring the completion and placing in operation of that portion of the railway between its present terminus and the intersection of Sutphin Road (Guilford Street) and Lambertville Avenue (Pacific Street), on or before August 1, 1916, and the completion and placing in operation of the remainder of said railway, or portions thereof, within such time or times, after August 1, 1916, as may be directed by resolution of the Board.

(*b*) By amending said Section 3, Eighth, so as to authorize the Corporation to construct and operate its railway at grade across the freight side-tracks on Sutphin Road (Guilford Street) leading from the main line of the Long Island Railroad Company to the warehouse of Messrs. J. & T. Adikes.

130 Now, therefore, In consideration of the sum of fifty dollars ($50), to be paid by the Corporation to the City on or before January 1, 1916, and of the mutual covenants and agreements herein contained, the parties hereto do hereby covenant and agree as follows:

Section 1. The parties hereto hereby consent, subject to the provisions and conditions hereinafter set forth, to certain modifications and amendments in and to said contract of October 29, 1912, as amended, said modifications and amendments to be as follows:

1. All of said Section 3, Seventh, of said contract of October 29, 1912 is hereby stricken out and the following substituted therefor:

"Seventh. The Company shall complete and put in operation that portion of the railway herein authorized from the Manhattan Terminal of the Queensboro Bridge to the intersection of the tracks of the Long Island Railroad with Thomson Avenue at or near Greenpoint Avenue on or before February 13, 1913, from the intersection of the tracks of the Long Island Railroad Company with Thomson Avenue to the intersection of Thomson Avenue and Broadway on or before April 30, 1913, from the intersection of Thomson Avenue and Broadway to the proposed new Long Island Railroad station in the former Village of Jamaica, on or before January 31, 1914.

"The Company shall complete and put in operation that portion of its railway herein authorized between the present terminus
131 thereof, at the Long Island Railroad Company's station, at Jamaica, and the intersection of Sutphin Road (Guilford Street) and Lambertville Avenue (Pacific Street), on or before May 1, 1916, and the remainder of its said railway between said intersection of Sutphin Road (Guilford Street) and Lambertville Avenue (Pacific Street) and the City Line at Central Avenue within such time or times as may be directed by resolution of the Board upon recommendation of the President of the Borough, provided that title to the streets involved has been vested in the City and that said streets have been regulated and graded.

"Upon the failure of the Company to complete the construction and place in operation any of the said portions of the railway on or

before the dates or times herein specified, the right herein granted shall cease and determine, and all sums or securities paid to the City, or deposited with the Comptroller as security for performance by the Company of the terms and conditions of this contract, as herein provided, shall be forfeited to the City without action by the City provided, however, that the Board may extend the time within which to complete the construction and place the railway in operation as it may deem just and equitable."

2. All of said Section 3, Eighth, of said contract of October 29, 1912, is hereby stricken out and the following substituted therefor:

"Eighth. Said railway shall not cross any railway or railroad other than street surface railways encountered in the route at
132 the grade thereof, but shall be constructed either above or below the grade of such railway or railroads; provided, however, that the Company may construct and operate the railway herein authorized at grade across the freight side-track now located on Sutphin Road (Guilford Street) leading from the main line of the Long Island Railroad Company to the warehouse of Messrs. J. and T. Adikes, under such regulations and conditions as may be prescribed by the Public Service Commission of the State of New York for the First District. If any railway or railroad other than street surface railways are operated at the same grade of the streets or avenues in which the Company is hereby authorized to construct a railway at the time the Company constructs such railway, then the Company may construct at its own expense and use a temporary crossing and approaches thereto either upon private property or within the lines of such streets or avenues to be determined by resolution of the Board, and continue to use such temporary crossing until such time as either the grade of such street or avenue or such railway or railroad shall have been changed so that such railway or railroad shall not cross such street or avenue at the grade thereof. When such grade shall have been changed and a permanent crossing shall have been constructed to carry such street or evenue either above or below the grade of such railway or railroad, then the Company shall, upon the order of the Board, abandon the above described temporary crossing, and construct its tracks upon
133 such permanent structure as shall be directed by the Board. Any property acquired in fee by the Company for the purpose of the temporary crossing hereinbefore provided for shall be ceded to the City without compensation therefor by the Company when the same is required by the City for the purpose of widening such street or avenue, upon the removal of the tracks of the Company from such temporary crossing and approaches thereto, to the permanent crossing structure."

Section 2. The grant of this privilege is subject to the following conditions:

All the terms, provisions and conditions contained in said contract dated October 29, 1912, as amended by said contract dated July 21,

1913, excepting those which are herein expressly amended or modified, shall remain unchanged and in full force and effect.

Section 3. The Corporation promises, covenants and agrees on its part and behalf to conform to and abide by and perform all the terms and conditions and requirements in this contract fixed and contained.

In witness whereof, The party of the first part, by its Mayor thereunto duly authorized by the Board of Estimate and Apportionment of said City, has caused the corporate name of said City to be hereunto signed and the corporate seal of said City to be hereunto affixed and the party of the second part, by its officers thereunto duly authorized, has caused its corporate name to be hereunto
134 signed and its corporate seal to be hereunto affixed the day and year first above written.

THE CITY OF NEW YORK,
By GEORGE McANENY,
[Corporate Seal.] *Acting Mayor.*

Attest:
P. J. SCULLY,
City Clerk.

MANHATTAN AND QUEENS TRACTION CORPORATION,
By ROBERT S. SLOAN,
[SEAL.] *President.*

Attest:
S. B. SEVERSON,
Secretary.

STATE OF NEW YORK,
County of New York,
City of New York, ss:

On the 21st day of January, 1916, before me personally came George McAneny, to me known, who being by me duly sworn, did depose and say, that he resided at No. 19 East 47th St., in the Borough of Manhattan, City of New York; that he was the Acting Mayor of The City of New York, the municipal corporation described in and which executed the above instrument; that he knew the corporate seal of The City of New York; that the seal affixed to said instrument was said corporate seal; that it was so affixed under and by virtue of the authority conferred on deponent by the
135 Board of Estimate and Apportionment of the said City of New York, and that he signed his name thereto by virtue of like authority.

J. G. CONLON,
[SEAL.] *Notary Public, New York County No. 677.*

New York Register No. 6272.
Com. expires March 30, 1916.

STATE OF NEW YORK,
County of New York,
City of New York, ss:

On the 24th day of Jan'y, 1916, before me personally came P. J. Scully, to me known, who being by me duly sworn did depose and say that he resided at No. 4 Columbia Street, in the Borough of Manhattan, City of New York; that he was the City Clerk of The City of New York, the municipal corporation described in and which executed the above instrument; that he knew the corporate seal of The City of New York; that the seal affixed to said instrument was such corporate seal; that it was so affixed under and by virtue of the authority conferred on him by the Board of Estimate and Apportionment of the said City of New York, and that he signed his name thereto by virtue of like authority.

And further, that he knew and was acquainted with George McAneny, and knew him to be the person described in and who, as Acting Mayor of The City of New York, executed the above instrument; that he saw him subscribe, execute and deliver the same, and that he acknowledged to him, the said P. J. Scully, that he
136 executed and delivered the same, and he, the said P. J. Scully, thereupon subscribed his name thereto.

CHAS. A. GLASER,
Commissioner of Deeds, New York City.

Term expires May 11, 1917.
Register's No. 17046, Kings 7030, Bronx 7013.
County Clerk's No. N. Y. 1118, Queens 152.

STATE OF NEW YORK,
County of New York,
City of New York, ss:

On the 28th day of December, 1915, before me personally came Robert S. Sloan, to me known, who, being by me duly sworn, did depose and say: That he resided in Plainfield, State of New Jersey; that he was President of the Manhattan and Queens Traction Corporation, the corporation described in and which executed the above instrument; that he knew the seal of the said corporation; that the seal affixed to said instrument was said corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name thereto by like order.

EDNA A. STOKES,
[SEAL.] *Notary Public, Kings County, No.* 331.

Kings Register No. 7121.
Certificate filed in New York County No. 261.
New York Register No. 7278.

137 STATE OF NEW YORK,
County of New York,
City of New York, ss:

On the 28th day of December, 1915, before me personally came S. B. Severson, to me known, who, being by me duly sworn, did depose and say: That he resided in the Borough of Queens, City of New York; that he was Secretary of the Manhattan and Queens Traction Corporation, the corporation described in and which executed the above instrument; that he knew the seal of said corporate; that the seal affixed to said instrument was said corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

EDNA A. STOKES,
[SEAL.] *Notary Public, Kings County, No.* 331.

Kings Register No. 7121.
Certificate filed in New York County No. 261.
New York Register No. 7278.

Approved as to form:
LOUIS H. HAHLO,
Acting Corporation Counsel.

I hereby certify that the within and foregoing resolution and contract have been compared by me with the originals on file in this office, and that they are correct transcripts therefrom and of the whole of said originals.

——— ———,
Assistant Secretary.

138 *Report of J. J. Blake, Dated February* 19, 1917, *Referred to in Petition.*

[SEAL.]

President of the Borough of Queens.

Bureau of Highways,

Engineer's Office,

Borough Building (L. I. City)

Maurice E. Connolly, President.

Subject —. New York, February 19, 1917.

Mr. Clifford B. Moore,
Consulting Engineer.

DEAR SIR:—

Replying to your letter of the 16th inst., transmitting a copy of a communication of Manhattan & Queens Traction Corporation in

which they ask to be advised as to whether or not title to Lambertville Avenue, Spangler Street, Smith Street, Ulster Avenue to Merrick Road, and from Merrick Road on Central Avenue to Springfield Avenue, has been taken by the City of New York and whether the streets have all been regulated and graded to the proper width as per the last Map of the City of New York adopted by the Board of Estimate and Apportionment, and if the same have not been regulated and graded to the full width, to be advised as to which sections have not, I beg leave to state that a contract was awarded for the

Regulating and grading at the legal grade and full width Lambertville Ave. (Pacific St.) between Sutphin Road and Spangler
139 (Vine) Street; Spangler (Vine) Street between Lambertville Ave. (Pacific St.) and Brinkerhoff Ave.; Brinkerhoff Ave. between Spangler (Vine) Street and Smith St. (Woodland Ave.); Smith St. (Woodland Ave.) between Brinkerhoff Ave. and Ulster Ave. Ulster Ave. between Smith St. (Woodland Ave.) and Merrick road, excepting the following numbered parcels as shown on the damage map of Lambertville Avenue, Nos. 24, 25, 33, 94, 115, 107 and 119.

Exception.

That Lambertville Ave. between Freehold St. (Norris Ave.) and Medford (Prospect) St. shall be graded to a temporary grade extending from the legal grade at Freehold St. (Norris Ave.) to the existing elevation of the Long Island Railroad tracks and thence to the legal grade at Medford (Prospect) Street and the contract has been completed in accordance with the resolution of the Board of Estimate and Apportionment. No work has been done on Central Avenue between the Merrick Road and Springfield Avenue excepting the laying of an asphaltic concrete pavement 16 feet in width which is approximately to the grade shown on the final map.

Respectfully,

(Signed) J. J. BLAKE,
Engineer of Highways.

140 *Order of the District Court Appointing Receivers, Filed and Entered November* 15, 1917.

In the District Court of the United States for the Eastern District of New York, at Brooklyn, New York, on November 15, 1917.

In Equity.

Present: Thomas I. Chatfield, U. S. D. J.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

On reading and filing the verified bill of complaint in this cause, and the verified answer of the defendant thereto this day
141 filed, and after hearing counsel for the respective parties, and after due consideration it appearing that the appointment of a Receiver is necessary to properly care for and preserve the rights, property and assets of the defendant, and the defendant appearing by Frueauff, Robinson and Sloan, its attorneys, and acquiescing in the prayer of the bill, and upon motion of Hornblower, Miller, Garrison and Potter, attorneys for the plaintiff, it is

Ordered, adjudged and decreed that William R. Begg and Arthur C. Hume be and they hereby are appointed until further order pending said litigation, Receivers for this Court of the defendant corporation, and of all of its franchises, rights, privileges, easements and interests, and of all of the property and assets of the said defendant, real, personal and mixed of whatsoever kind and description, and wheresoever situated, including all railways, tracks and equipment, cars and other rolling stock, offices, shops, and all buildings and appurtenances of every kind, equipment, tools, furniture, machinery, fixtures, materials and supplies, books of account, records and other books and papers, cash in banks, on deposit and in hand, money, debts, things in action, credits, deeds, leases, contracts, monuments of title, bills receivable, rents, issues, profits and income accruing and to accrue; that the said Receivers be and they hereby are authorized immediately to take possession of the same and to run, manage and operate the said railway and properties, in such manner as will in their judgment produce the most satisfactory results, so that the operation of the railway system of the defendant shall be continued, and the public duties ob-
142 ligatory upon the defendant in that respect be in all respects discharged, and to exercise the authority and franchises, easements, rights, and privileges of the defendant, and to preserve and protect its said system in proper condition and repair, and to protect the title and possession thereof and in their discretion to employ and discharge and fix, subject to approval of this Court on accounting, the compensation of all officers, attorneys (other than

counsel), managers, superintendents, agents, employees and servants, and to make such payments and disbursements as may be needful and proper in so doing; that the said Receivers be and they hereby are authorized to collect the rents, income, tolls and profits of the said railway and property, and to make appropriate payments therefrom on account of accruing rents and other necessary charges, and they shall have the power to redeem any and all securities of the defendant now pledged as security on loans of money after application to this Court, and to pay such sums as may be needful for current necessities for labor and supplies, and for the operation of the said railway without the further order of this Court; and the said Receivers are hereby fully authorized and empowered to institute and prosecute all suits as may be necessary in their judgment for the proper protection of the franchises, rights, easements, interests and property of the trust hereby imposed in them, and likewise to defend all actions instituted against them as Receivers, and also to appear in and conduct the prosecution or defence of any suits now pending in any court by or against the defendant, the prosecution and defence of which will, in the judgment of the
143 said Receivers, be necessary for the proper protection of the franchises and property placed in their charge or the interests and rights of creditors connected therewith; and the said Receivers are hereby authorized in their discretion, from time to time, out of the funds coming into their hands, to pay the expenses of operating the said properties and executing their trusts, and of all taxes and assessments upon the said properties, or any part thereof, and also to pay and discharge all claims arising from the previous operation of the said properties as in their judgment, on examination, are proper to be paid as expenses of operation and the current and unpaid payrolls and supply accounts incurred in the operation of the said railway system. The said Receivers are hereby required to open and keep proper books of account; and it is

Further ordered that the joint and several bond of the said Receivers in the sum of $25,000 conditioned that he will well and truly perform the duties of his office, and duly account for all moneys or property which may come into his hands, and abide and perform all things which he shall be directed to do, with sufficient sureties, to be approved by a Judge of this Court, be filed in the office of the Clerk of this Court within five days; and it is

Further ordered that each and every of the officers and directors, agents and employees of the defendant and all other persons whomsoever, be and they hereby are required and commanded forthwith, upon demand of the said Receivers, or their duly authorized agent, to turn over and deliver to the said Receivers any and all
144 books of account, papers, deeds, leases, contracts and all other property in their hands, or under their control, and each of the said directors, officers, agents and employees is hereby commanded and required to obey and perform such orders as may be given to them, from time to time, by the said Receivers, or their duly constituted representative, in conducting the operation of the said system and in discharging their duties as Receivers.

And the defendant, and its officers, directors, agents and employees, and all other persons, firms and associations and corporations, public officers and public officials, whomsoever, are hereby enjoined and restrained from attaching, seizing, levying upon, or otherwise taking or interfering in any way whatsoever with the possession, control or management of any part of the franchises, rights, property or assets, over which the Receivers are hereby appointed, or interfering in any way to prevent the discharge of their duties, or their operating the said railway; and it is

Ordered that said Receivers prepare and submit for the Court a list of creditors with addresses and amount of claims and that notice be sent by said Receivers to each creditor of a hearing before this Court on December 19, 1917, as to whether the appointment of said Receivers shall be continued or whether other Receivers shall be appointed and the present Receivers removed. Said meeting to be held at 2 p. m. and on ten days' notice by mail.

Further ordered that the said Receivers may and so may any party in interest, from time to time, apply to the Court for further directions.

THOMAS I. CHATFIELD,
United States District Judge.

145 *Order of the District Court Continuing Receivers as Permanent Receivers, Filed and Entered December 26, 1917.*

At a Stated Term of the United States District Court for the Eastern District of New York, held at the Court House in the Borough of Brooklyn, New York, on December 26, 1917.

Present: Hon. Thomas I. Chatfield, U. S. D. J.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

An order having been made by this Court herein on the 15th day of November, 1917, appointing William R. Begg and Arthur C. Hume, Receivers of Manhattan and Queens Traction Corporation, which order, among other things, provided that said Receivers prepare and submit for the Court a list of creditors and addresses and amount of claims and that notice be sent to each creditor of a hearing before this Court on December 19, 1917, as to whether the appointment of said Receivers should be continued or whether other Receivers should be appointed, said meeting to be held at 2 o'clock in the
146 afternoon of December 19, 1917, and on ten days' notice by mail, and the said Receivers on December 7, 1917, having submitted to this Court and filed and entered herein a preliminary financial report of the property and assets of the Manhattan and

Queens Traction Corporation, which report contained a list of creditors and addresses and the amount of their respective claims, and it appearing from the annexed notice and affidavit of Frederick H. Adler, verified the 22nd day of December, 1917, that a notice as required by the said order of November 15, 1917, was mailed on December 6, 1917, to each of the creditors of Manhattan and Queens Traction Corporation, and on the 19th day of December, 1917 at 2 o'clock in the afternoon at a Stated Term of this Court, Arthur C. Hume and William R. Begg, Receivers appearing in person, and by their counsel, Frueauff, Robinson and Sloan, by Robert S. Sloan, of counsel, and Gas and Electric Securities Company, plaintiff and judgment creditor, appearing by Hornblower, Miller, Garrison and Potter, by Henry M. Earle, of counsel, William A. Pulis, Queens Plaza Contracting Company, appearing by Peter M. Daly, its attorney, C. W. Birdsall and Son, Brooklyn, Queens County and Suburban Railroad Company, creditors appearing and not opposing a continuance of the said Receivers,

Now, on motion of Frueauff, Robinson and Sloan, attorneys for Arthur C. Hume and William R. Begg, Receivers of the Manhattan and Queens Traction Corporation, it is

147 Ordered and decreed, that William R. Begg and Arthur C. Hume be, and they hereby are, continued as permanent Receivers of the Manhattan and Queens Traction Corporation and of all of its franchises, rights, railway property and assets, and continued in the possession thereof until the trial of this action and decree therein or prior further order of this Court, with all of the rights and powers granted by and contained in the order of this Court made, filed and entered herein on November 15, 1917, which order is hereby ratified, confirmed and continued and it is

Further ordered that the joint and several bond of the said William R. Begg and Arthur C. Hume, heretofore approved by this Court and filed and entered herein on the 19th day of November, 1917, shall continue in force and effect as the bond of said Receivers.

THOMAS I. CHATFIELD,
U. S. D. J.

148 *Notice as to Continuation of Receivers.*

In the District Court of the United States for the Eastern District of New York.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

Please take notice that pursuant to the order of the United States District Court for the Eastern District of New York, dated and filed in the above entitled cause, on the 15th day of November, 1917, the

undersigned William R. Begg and Arthur C. Hume, duly appointed, qualified and acting receivers of the Manhattan and Queens Traction Corporation, hereby give notice of a hearing before this Court at a stated term thereof to be held in the United States Post Office Building in the Borough of Brooklyn, City of New York, Eastern District of New York, on the 19th day of December, 1917, at 2 o'clock in the afternoon on that day, as to whether the ap-
149 pointment of the said receivers shall be continued, or whether other receivers shall be appointed and the present receivers removed.

Dated, December 5th, 1917.

WILLIAM R. BEGG,
Office & P. O. Address, No. 24 Broad Street, Borough of Manhattan, New York City, N. Y.
ARTHUR C. HUME,
Office & P. O. Address, No. 40 Pine Street, Borough of Manahattan, New York City, N. Y.,
Receivers of the Manhattan and Queens Traction Corporation.

150 *Verified Bill of Complaint in the Main Cause of Action Herein Brought by Gas and Electric Securities Company and Filed on November* 1, 1917.

In the District Court of the United States for the Eastern District of New York.

In Equity.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

To the Honorable Judge of the District Court of the United States for the Eastern District of New York:

The plaintiff, Gas and Electric Securities Company, a corporation duly organized and existing under the laws of the State of Delaware, and a citizen of the said state, on its behalf and on behalf of all other creditors and subscribers to the stock of the defendant, who may join herein, brings this bill of complaint against Manhattan and Queens Traction Corporation, a railroad corporation duly organized and existing under the laws of the State of New York and a resident and citizen of the said state, and thereupon the plaintiff alleges as follows:

151 I. That this is a civil suit in the nature of a claim in equity and the amount in controversy in this action exceeds, exclusive of interest and costs, the sum or value of Three thousand ($3,000) Dollars.

II. That the plaintiff, at the time of the commencement of this action, and at all the times hereinafter mentioned, was, and now is a foreign corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and was at such time and still is a resident of the City of Dover, County of Kent and State of Delaware and a non-resident of the State of New York.

III. That the defendant at the time of the commencement of this action and at all the times hereinafter mentioned, was and now is a railroad corporation duly organized and existing under and by virtue of the Railroad Law of the State of New York, and was at such times and still is a resident of The City of New York, County of Queens, and State of New York, and of the Eastern District of New York, and its property is located and it operates its railway and has its principal place of business within the County of Queens, City and State of New York, and in the said Eastern District of New York.

IV. That on the 14th day of November, 1917, plaintiff recovered judgment against the defendant in this Court in a cause entitled Gas and Electric Securities Company, plaintiff, vs. Manhattan and Queens Traction Corporation, defendant, wherein it was ordered and adjudged by this Court that the said plaintiff should have and
152 recover from said defendant, the sum of One million one hundred and fifty-eight thousand five hundred six and 84/100 ($1,158,506.84) Dollars together with costs. This Court having jurisdiction of the said cause and of the said parties and of the subject matter thereof.

V. That on the 14th day of November, 1917, plaintiff caused a writ of execution to be issued by the Clerk of this Court to the United States Marshal for the Eastern District of New York upon the aforesaid judgment in said action but the property of the defendant consists almost entirely of railway equipment actually employed in and essential to the operation of its said railway, and that its other property consists merely of a small amount of supplies and equipment, the total value of which would be entirely insufficient to satisfy more than a small part of the said judgment.

VI. That heretofore and on or about the 27th day of December, 1912, a certain franchise contract between The City of New York and the South Shore Traction Company, dated October 29, 1912, and all of the rights and privileges granted thereby, and all of the property and assets of the said South Shore Traction Company within The City of New York, were duly sold, assigned, transferred, and delivered unto the defendant with the due consent of the Board of Estimate and Apportionment of The City of New York and with the approval of this Court.

VII. That on or about the 21st day of July, 1913, and on or about the 21st day of January, 1916, said franchise contract, dated October
153 29, 1912, was duly amended by the Board of Estimate and Apportionment of The City of New York; that copies of

the said franchise contract and of its two said amendments are annexed to this bill and made a part hereof.

VIII. That defendant, in pursuance of and under said franchise contract and its aforesaid amendments, and in reliance thereon, has duly constructed and put in operation a double track street service electric railway between the Long Island Plaza of the Queensboro Bridge at Jackson Avenue, upon, along and over Thomson Avenue, Hoffman Boulevard and other streets and avenues in the Borough of Queens, within the Eastern District of New York, to the intersection of Sutphin Road (Gilford Street) and Lambertville Avenue (Pacific Street) and is now operating the same between said points, in addition to operating a bridge local service over the Queensboro Bridge from the Manhattan Terminal thereof to the said Jackson Avenue, situated in Long Island City in the Borough and County of Queens, which right to operate said bridge local service was and is granted to the defendant in said franchise contract; that the defendant is the owner of the said street service railway system and all of the street railway property located and operated within The City of New York, Borough of Queens, County of Queens, in the Eastern District of New York, said property consisting of about 10.4 miles of double track street service railway and the overhead construction necessary to operate the same by electrical energy, street cars, and other personal property and equipment used as a part of and in connection with said street service railway system, and
154 in the operation thereof, as well as certain other supplies and equipment not at present a part of the said operated system.

IX. That there is no mortgage upon the property of the defendant and the defendant has not issued any bonds; that no stock has been issued except that two hundred shares of the par value of One hundred Dollars ($100) each of the stock of the defendant, has been subscribed for. The plaintiff is informed and alleges that in addition to the said judgment held by it the defendant has an outstanding indebtedness of approximately $520,000.

X. That heretofore and on or about the 16th day of February, 1917, the Board of Estimate and Apportionment of The City of New York passed a resolution without notice to the defendant requiring the defendant within thirty days after February 23, 1917, to commence the construction of that portion of its railway from the intersection of Sutphin Road and Lambertville Avenue to the intersection of Central Avenue and Springfield Road, and to complete and put the same in operation within six months or before the 23rd day of August, 1917.

That the defendant had duly completed and carried out the terms and conditions of its franchise contract on its part to be performed in all respects and completed the construction of its railway and put the same in operation to the intersection of Sutphin Road and Lambertville Avenue in the Borough of Queens, a distance of 10.4 miles from the Long Island Plaza of the Queensboro Bridge prior
155 to the 1st day of May, 1916, as required by said franchise contract and its amendments; that the balance of the said

road between the intersection of Sutphin Road and Lambertville Avenue and the City line, was in accordance with the terms of the said franchise contract and its amendments, to be constructed only upon resolution by the Board on recommendation of the President of the Borough, when title to the streets involved had been vested in the City, and said streets had been regulated and graded.

That title to many of the streets involved beyond the intersection of Sutphin Road and Lambertville Avenue was not vested in the City until the 16th day of February, 1916. That title to certain portions of the said streets involved, has not as yet been vested in The City of New York, and that certain portions of the said streets have not yet been regulated and graded to the legal grade thereof, nevertheless the said Board without notice to the defendant, passed the said resolution requiring the construction as stated.

That notwithstanding these facts The City of New York through its Board of Estimate and Apportionment, recently served notice upon the defendant to show cause before them why a resolution should not be passed forfeiting the said franchise contract, and providing that the said railway of the defendant constructed and now in use by virtue of said franchise contract, should not thereupon become the property of The City of New York.

XI. Plaintiff is informed and avers that owing to the existing conditions of the material market and to the universal difficulty of obtaining adequate labor, the defendant is, and for an in-
156 definite period must remain unable to proceed with the said construction work in accordance with the requirements of said resolution, which is to the detriment of its interests and of its creditors.

Plaintiff is further informed and avers that the defendant having been unable, for the reasons above stated, to proceed with its construction, could not issue securities in order to finance its operations and became obliged to negotiate from time to time for short term loans, which method is no longer expedient under present financial conditions.

XII. That in addition to the said obligations of the defendant in relation to the uncompleted portion of its line, it is necessary for it to continue the operation of the local service over the Queensboro Bridge and its line from the Manhattan Terminal of the said bridge to a point within the town of Jamaica, Long Island, a distance of 10.4 miles and which line is extensively used by the public.

XIII. That under these circumstances the interference of a Court of Equity for the protection of the plaintiff's rights is imperatively required, and especially for the timely appointment of a Receiver to take charge of and preserve the property of the defendant, continue the operation of its system for the accommodation of the public and collect and receive and properly appropriate the income thereof until the final decree of the Court in the premises.

XIV. Inasmuch, therefore, as plaintiff has no adequate remedy at law and can have relief only in equity, it files its bill of
157 complaint in behalf of itself and other creditors of the defendant who may come in and contribute to the expense thereof, and prays for equitable relief as follows:

1st. That the rights of plaintiff and all the other creditors of the defendant may be ascertained and decreed, and that this Court fully administer the property and assets of the defendant and enforce and decree the rights, liens and equities of the creditors.

2nd. That a Receiver may be appointed for the defendant and all of its property of whatever description and wherever situated, and with all the incidental powers ordinarily vested in a Receiver in such cases, the full power and authority to operate said railroad, collect and receive all income thereof, and to protect and preserve the corporate franchise rights and property, and to protect and preserve same from being sacrificed under any proceedings which can or may be taken for that purpose.

3rd. That temporarily and pending this suit, an injunction may be issued against the defendant and all other persons, corporations or public officials, to restrain them from interfering with said Receiver taking possession of said property, and that plaintiff may have such further relief in the premises as the nature of the case may require.

4th. That a writ of subpœna may be granted to plaintiff directed to the defendant requiring it to appear on a day certain before the Court and answer all and singular the matters above stated. (Answer under oath being hereby expressly waived.)

158 Further that plaintiff have such further and other relief as the Court may deem proper and equitable.

HORNBLOWER, MILLER, GARRISON & POTTER,
Attorneys for Plaintiff.

Office & P. O. Address, No. 24 Broad Street, Manhattan Borough, New York City.

STATE OF NEW YORK,
County of New York, ss:

Thomas A. Wallace, being duly sworn, doth depose and say: That he is the Secretary of the Gas and Electric Securities Company, the plaintiff in this suit; that he has read the foregoing bill of complaint in this suit and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

That the reason this verification is made by deponent and not by the plaintiff is that plaintiff is a corporation and deponent said officer thereof.

THOMAS A. WALLACE.

Sworn to before me this 15th day of November, 1917.

EDNA STOKES,
Notary Public, Kings County, No. 369.

Kings Register No. 9136.
New York County No. 485.
New York Register No. 9389.
My Commission expires March 30, 1919.

159 Contracts dated Oct. 29, 1912, July 21, 1913, and January 21, 1916, attached to foregoing complaint, are similar to the contracts annexed to foregoing petition printed at pp. 69-114, 115-123 and 124-137 of this record.

160 *Verified Answer to Said Bill of Complaint of the Manhattan and Queens Traction Company and Filed Herein on November* 15, 1917.

Copy.

In the District Court of the United States for the Eastern District of New York.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

To the Honorable Judge of the District Court of the United States for the Eastern District of New York:

Now comes Manhattan and Queens Traction Corporation, the defendant, and having examined the bill of complaint of Gas and Electric Securities Company, plaintiff, against this defendant, in this Court, admits the allegations in said bill as true and makes no defence to the matters and things therein set forth, and consents that a Receiver may be appointed as therein prayed for, and prays that
161 this Court, sitting in equity, may take possession of the railway system of the defendant, through the appointment of a Receiver as prayed for in said bill of complaint, and thereby preserve the unity of the system of the defendant and protect and preserve the corporate franchises, rights, privileges and property of the defendant, and preserve the same from being sacrificed under any proceedings which can or may be taken, liable to prejudice or sacrifice the same,

and the defendant accordingly prays that inasmuch as there is no adequate remedy at law in the premises for the plaintiff, or for this defendant, that this Court will, for the purposes aforesaid, appoint a Receiver and empower and authorize such Receiver to take possession of the entire property, franchises and assets of this defendant, and preserve, manage, operate and control the same, and otherwise discharge all the duties ordinarily imposed by courts upon Receivers in similar cases; and that this Court under said bill of complaint, and this answer, or such supplemental bill as shall be filed herein, make such decree or decrees with respect to the property of this defendant as shall deal with the same on general equitable principles, and that this Court will cause all the liens upon the said property or any part thereof, and all rights and claims in equity, of persons interested therein, to be preserved, defined and determined, and that this Court will direct all persons in possession of the property of this defendant, or any part thereof, to surrender the same to such Receiver, and that all persons, firms, corporations and public officials be
162 enjoined and restrained from interfering with the rights, property and assets of this defendant.

FRUEAUFF, ROBINSON & SLOAN,
Attorneys for Defendant.

Office & P. O. Address, No. 60 Wall Street, Borough of Manhattan, New York City.

ROBERT S. SLOAN,
Of Counsel.

STATE OF NEW YORK,
County of New York, ss:

William W. Lowe, being duly sworn, doth depose and say: That he is the president of the Manhattan and Queens Traction Corporation, the defendant in this suit; that he has read the foregoing answer to the bill of complaint in this suit and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. That the reason this verification is made by deponent and not by the defendant is that defendant is a corporation and deponent said officer thereof.

WILLIAM W. LOWE.

Sworn to before me this 15th day of November, 1917.
[SEAL.] EDNA A. STOKES,
Notary Public, Kings County No. 369.

Kings Register No. 9136.
New York County No. 485.
New York Register No. 9389.
My commission expires March 30, 1919.

163 *Answer of the City of New York to the Petition Filed on March 21, 1918.*

District Court of the United States for the Eastern District of New York.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR C. Hume, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

The City of New York, answering the petition of the Receivers herein by William P. Burr, Corporation Counsel, alleges on information and belief:

First. Admits the allegations contained in paragraphs "I" and "II" of the petition, except that the date "December 3, 1917" mentioned in said paragraph "II" is not correct and should be "December 3, 1912."

Second. Admits the allegations contained in paragraphs "III," "IV," "V" and "VI" of the petition, except it denies that due
164 proof of the placing in operation of the Traction Corporation's street surface railway from the Queensboro Bridge to Sutphin Road and Lambertville Avenue was accepted by the Board of Estimate and Apportionment on May 5, 1916, as alleged in paragraph "VI" of the petition and alleges that there was no formal acceptance of the papers submitted by the Manhattan and Queens Traction Corporation, but that a report from the Bureau of Franchises of the Board of Estimate and Apportionment that a railway was in operation as stated, was submitted to the Board and the papers in the matters ordered filed.

Third. Admits the allegations contained in paragraphs "VII," "VIII," "IX," "X" and "XI" of the petition, except that it denies that the matter referred to and set forth in paragraph "XI" of the petition was not on the calendar of the Board of Estimate and Apportionment for the meeting of February 16, 1913, but was introduced by the President of the Borough of Queens by unanimous consent.

Fourth. Admits the allegations contained in paragraphs "XII," "XVI," "XVII," "XVIII," "XX" and "XXI" of the petition, except that it denies that the application for an extension of time mentioned in paragraph "XXI" of the petition was presented to the Board of Estimate for consideration for the first time on October 19, 1917, and alleges that the petition was presented to the Board of Estimate and Apportionment and referred to the Bureau of Franchises of the

Board of Estimate and Apportionment at the meeting of September 21, 1917, on which day was held the first meeting after the receipt of said application.

165 Fifth. Admits the allegations contained in paragraphs "XXII," "XXIII" and "XXVIII" of the petition, and alleges that for the first five years of the grant of the franchise of the Manhattan and Queens Traction Corporation expiring October 29, 1917, the compensation to the City under said contract was 3% of the gross receipts with an annual minimum of $3,500 so that the said Traction Corporation has only just entered upon the payment of 5% with the minimum of $7,000 mentioned in said paragraph "XXVIII" of the petition.

Sixth. Admits the allegations contained in paragraph "XXIX" of the petition.

Seventh. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "XIX," "XXIV," "XXV," "XXVI," "XXVII," "XXX," "XXXII" and "XXXIII" of the petition.

Eighth. Denies the allegations contained in paragraphs "XV" and "XXXI" of the petition.

Ninth. Denies the allegations contained in paragraph "XIII" of the petition, except that it admits that the City of New York did not acquire title in fee to the roadbed of the Long Island Railroad Company where it crosses Lambertville Avenue near Carlisle Street; that said avenue is not physically opened across the tracks of the Long Island Railroad at this point for vehicular traffic and said avenue is graded at that point to a temporary grade, and except that it further denies any knowledge or information sufficient to form a belief as to the allegation that when Lambertville Avenue shall be legally
166 and physically opened and graded it will pass under the tracks of the Long Island Railroad Company as set forth in the order of the Public Service Commission dated November 9, 1912, in case No. 1567.

Tenth. It denies the allegations contained in paragraph "XIV" of the petition, except that it admits that old Central Avenue, composed of Ulster Avenue, Westchester Avenue, 117th Avenue and Dearborn Avenue, has title vested in the City of New York to the width of said old Central Avenue, and alleges that the full legal width of said old Central Avenue was 50 feet, and except that it admits that a line of poles are on each side of the asphalt on said old Central Avenue, and alleges that said poles may be removed by the Manhattan and Queens Traction Corporation whenever it pleases and that the Companies owning said poles and the local authorities and officials of the City of New York will consent to such removal and have been always ready and willing to consent to such removal whenever the said Manhattan and Queens Traction Corporation undertakes the construction of the extension of its railway, and further alleges that said Manhattan and Queens Traction Corporation is under the duty to remove said

poles at its own expense whenever and wherever they interfere with the construction of its line.

Eleventh. Specifically answering paragraphs marked "XIII" and "XIV" of the complaint, alleges that the franchise contract of October 29, 1912, as amended by the resolution of the Board of January 21, 1916, contains among others the following provisions:

167 "Sec. 3:

Eighth. Said railway shall not cross any railway or railroad other than street surface railways encountered in the route at the grade thereof, but shall be constructed either above or below the grade of such railway or railroads. If any railway or railroad other than street surface railways are operated at the same grade of the streets or avenues in which the Company is hereby authorized to construct a railway at the time the Company constructs such railway, then the Company may construct at its own expense and use a temporary crossing and approaches thereto either upon private property or within the lines of such streets or avenues to be determined by resolution of the Board, and continue to use such temporary crossing until such times as either the grade of such street or avenue or such railway or railroad shall have been been changed so that such railway or railroad shall not cross such street or avenue at the grade thereof. When such grade shall have been changed and a permanent crossing shall have been constructed to carry such street or avenue either above or below the grade of such railway or railroad, then the Company shall upon the order of the Board, abandon the above described temporary crossing, and construct its tracks upon such permanent structure as shall be directed by the Board. Any property acquired in fee by the Company for the purpose of the temporary crossing hereinbefore provided for shall be ceded to the City without compensation therefor by the Company, when
168 the same is required by the City for the purpose of widening such street or avenue, upon the removal of the tracks of the Company from such temporary crossing and approaches thereto, to the permanent crossing structure.

Ninth. Any alteration to the sewerage or drainage system, or to any other subsurface or to any surface structures in the streets, required on account of the construction or operation of the railway, shall be made at the sole cost of the Company, and in such manner as the proper City officials may prescribed.

Tenth. Should the grades or lines of the streets and avenues in which the railway is hereby authorized be changed at any time during the term of this contract, or should any such street or avenue be made a boulevard, in which it may be desirable to have the position of the tracks changed, the Company shall, at its own expense, change its tracks to conform with such new grades, lines and positions as shall be directed by the Board or by the official having jurisdiction of such streets, avenues or boulevards, and during the

construction of any public improvement upon said street, avenue or boulevard, the Company shall take care of and protect the track at its own expense; all to be done subject to the direction of the City official having jurisdiction.

Should, in the opinion of the President of the Borough of Queens, the present roadway of any of the said streets, avenues or
169 highways be of insufficient width to accommodate both railway and other vehicular traffic, the Company shall widen such roadway under the direction of the President of the Borough of Queens to a width sufficient to accommodate such traffic; provided, that no roadway shall be widened beyond the total width of the street, avenue or highway.

* * * * * * *

Fourteenth. It is agreed that the right hereby granted to operate a street surface railway shall not be in preference or in hindrance to public work of the City, and should the said railway in any way interfere with the construction of public works in the streets or avenues, whether the same is done by the City directly or by a contractor for the City, the Company shall, at its own expense, protect or move the tracks and appurtenances in the manner directed by the City Officials having jurisdiction over such public work.

* * * * * * *

Sixteenth. The grant of this privilege as subject to whatever right, title or interest the owners of abutting property or others may have in and to the streets and avenues in which the Company is authorized to operate.

* * * * * * *

Sec. 5:

Fourth. Said railway shall be constructed and operated in the latest approved manner of street railway construction and operation, and it is hereby agreed that the Board may require the Company to improve or add to the railway equipment' including roll-
170 ing stock and railway appurtenances, from time to time, as such additions and improvements are necessary, in the opinion of the Board. Upon failure on the part of the Company to comply with the direction of the Board within a reasonable time, the rights hereby granted shall cease and determine.

The words "streets involved" used in the amendment of January 21, 1916, of the contract of October 29, 1912, mean the streets originally mentioned and involved in the said contract of October 29, 1912, and also refer solely to the streets and portions of the streets actually owned by and belonging to The City of New York and not the streets or portions thereof as they are proposed on the final map of The City of New York; that the placing of a proposed street on a city map does not make it a public street or a street belonging

to The City of New York and that the lands lying within the lines of such a proposed city street do not actually become a City street, nor do such lands belong to The City of New York until title is vested in the City through street opening proceedings, delivery of a deed or by dedication and acceptance; that the words "streets involved" used in said amendment of said contract refer only to so much of such streets as are involved in or necessary to the construction of the railroad of the Manhattan and Queens Traction Corporation and such portion of such streets would not include the land lying between the curbs thereof and the street lines of such streets; that under the general rule of the Board of Estimate and Apportionment of April 23, 1909, a street 75 feet wide must
171 have a roadway of 40 feet and sidewalks of 17½ feet on each side—that is, the roadway width shall be 80 per cent. of the street, less 20 feet.

That Lambertville Avenue was laid out on the final map of The City of New York as amended by map dated February 19, 1915, approved by the Board of Estimate and Apportionment April 1, 1915, as a street 75 feet wide; that title to this avenue was vested in The City of New York by resolution of the Board of Estimate and Apportionment December 10, 1915, a copy of which resolution is attached to petitioner's petition and marked "Exhibit A"; that the damage parcels mentioned in this resolution and stated to be excepted are shown on the draft damage map dated April 14, 1915, of Lambertville Avenue, extending from Sutphin Road to Merrick Road, filed in the office of the Topographical Bureau of Queens, and a copy of which is hereto attached, made part hereof and marked "Exhibit A"; this map shows the lines of old Pacific Street 60 feet wide and also the lines of the proposed new street called Lambertville Avenue 75 feet wide, which takes in the said old Pacific Street.

That it appears from the reports of Nelson P. Lewis, Chief Engineer of the Board of Estimate and Apportionment, dated October 11, 1915, and December 8, 1915, respectively, which are set forth on pages 7969, 7970 and 7971 of the minutes of the Board of Estimate and Apportionment of December 10, 1915, that title was taken to Lambertville Avenue and also to Spangler Street, Brinkerhoff Avenue, Smith Street, Ulster Avenue to Merrick Road—

172 "in order that the way might be cleared for the issue of a permit to the Manhattan and Queens Traction Corporation for the construction of a trolley railroad,"

and the said streets and avenues were regulated and graded—

"in order to clear the way for the construction of a trolley railroad under a franchise granted to the Manhattan and Queens Traction Corporation,"

and that the estimated cost of this regulation and grading would be about $30,000, the burden of which payment will fall upon the property owners along the route.

That the regulating and grading of Lambertville Avenue, Spangler Street, Brinkerhoff Avenue, Smith Street and Ulster Avenue was finished December 19, 1916, to their full width, as shown by the affidavit of Joseph L. Ashmead, verified January 29, 1918, hereto attached, made part hereof and marked "Exhibit B."

That certain portions of the proposed Lambertville Avenue lying within the lines of said proposed avenue, as it is shown on the final city map, were not regulated or graded as they had not become at that time part of the city street; these parcels are shown on a map or sketch made to a scale dated March 5, 1918, hereto attached and marked "Exhibit C"; these parcels lie within the curb line of Lambertville Avenue and in no way affect the 40 foot roadway of said avenue or the construction of a trolley line thereon.

That Lambertville Avenue, between Freehold and Medford Streets, has been brought to a temporary grade so as to be on a level
173 with the roadbed of the Long Island Railroad Company, where intersected by said railroad, in order to permit the Manhattan and Queens Traction Corporation to build its railway across the tracks of the Long Island Railroad Company; that the said amendment of January 21, 1916, of the contract of October 29, 1912, does not provide that the "streets involved" should be graded to the grade shown on the final map of the City of New York; that the grading of Lambertville Avenue at said point of intersection to a temporary grade sufficient for the construction of said railroad was sufficient to justify the Board of Estimate and Apportionment on February 16 ,1917, in directing the construction of the said railroad from Sutphin Road to Springfield Road.

That it appears from a letter dated January 29, 1918, addressed to Vincent Victory, Assistant Corporation Counsel, and signed J. F. Keany, General Solicitor, that the Manhattan and Queens Traction Corporation may build its trolley line across the right of way of the Long Island Railroad Company where said right of way crosses Lambertville Avenue whenever the said Manhattan and Queens Traction Corporation desires to so construct.

A copy of the above mentioned letter, together with a copy of the proposed agreement mentioned therein are hereto attached and made part hereof, marked "Exhibits D and E," respectively.

That old Central Avenue, including Westchester, 117th and Dearborn Avenues, was laid out to the width of about 50 feet as shown by a map entitled: "Map showing a change in the street system heretofore laid out by altering the grades of Ulster Avenue, from
174 Smith Street to Westchester Avenue, Westchester Avenue from Ulster Avenue to 117th Avenue, 117th Avenue from Westchester Avenue to Dearborn Avenue and Dearborn Avenue from 117th Avenue to New York City Line, in the Fourth Ward, New York, August 4, 1915," adopted by the Board of Estimate and Apportionment November 12, 1915, and approved by the Mayor November 18, 1915, and filed with the Clerk of Queens County February 14, 1916, and a blue print of said map, properly colored, being attached to the affidavit of Frank B. Tucker, Engineer in the Topographical Bureau in the office of the President of the Borough

of Queens, and which affidavit is hereto attached and made part hereof and marked "Exhibit F."

That this damage map shows the line of said old Central Avenue as well as the lines of the proposed new street sought to be acquired.

That the grades of said old Central Avenue were on February 16, 1917, and since November 18, 1916, have been fixed so as to conform to the then and present user grades of the roadway as they existed and now exist physically on the ground, except between Rutland Street and Glenham Street, where they were made to conform to the sidewalk improvements so as to permit the construction of the railroad of the Manhattan and Queens Traction Corporation, as appears from the said affidavit of Frank B. Tucker.

That said old Central Avenue, between Merrick Road and Farmers Avenue, was acquired in fee by the Commissioners of Highways of the Town of Jamaica to the width of three rods, or 49½ feet on January 13, 1860, and that, therefore, this avenue antedated the
175 construction of the Montauk Division of the Long Island Railroad Company.

That the portion of Central Avenue between Farmers Avenue and Springfield Road is in the City and was acquired in fee to a width of three rods in 1837, all of which appears in detail from the said affidavit of Frank B. Tucker.

That previous to February 16, 1917, said old Central Avenue was, and now is, regulated and graded to the full width of said avenue, which is about 50 feet, as appears from the said affidavit of Frank B. Tucker; that title in fee to old Central Avenue, as shown on said damage map, was again vested to the full width of 50 feet in the City of New York on February 16, 1917.

That the poles mentioned in paragraph XIV of the petition as being erected on Westchester Avenue and 117th Avenue are owned by the New York Telephone Company and by the New York and Queens Electric Light and Power Company and that their existence on said avenues did not prevent the construction of the railway of the Manhattan and Queens Traction Corporation; that the said New York Telephone Company and New York and Queens Electric Light and Power Company are, and have always been, willing that said poles be removed so as to permit the construction of the railway of said traction company, which appears from a letter of the New York Telephone Company dated February 4, 1918, addressed to Mr. Charles U. Powell, Engineer in charge of Topographical Bureau, and signed P. D. Honeyman, Division Plant Superintendent, which letter is hereto annexed, made part hereof and marked "Exhibit G"; and also
176 a letter from the New York and Queens Electric Light and Power Company dated February 14, 1918, addressed to Mr. Charles U. Powell, Engineer in Charge of Topographical Bureau, and signed Charles A. Barton, General Sales Agent, which letter is hereto annexed, made part hereof and marked "Exhibit H."

The removal of all such poles of public service corporations was made by the said Manhattan and Queens Traction Corporation at its own expense in constructing its line from Queensboro Bridge out to Sutphin Road and Lambertville Avenue and the existence of the

poles of said companies along the line of its route was found in no way an obstruction to the building of said trolley line.

Specifically answering paragraph XIX of the petition alleges that in the month of December, 1917, the receivers herein applied for and obtained an order of the United States District Court for the Eastern District of New York for permission to sell 400 tons of the steel rails mentioned in said paragraph and which were purchased for the purpose of constructing the extension of the line of the Manhattan and Queens Traction Corporation from Sutphin Road out to Springfield Road; that said receivers also applied for an order for the sale of 8,000 feet of copper trolley wire purchased for the same purpose; that it appears, therefore, from these acts on the part of the receivers of said corporation that it is their intention not to construct the extension to said railroad directed by the Board of Estimate and Apportionment, but on the contrary it is their intention and purpose to defy said direction of the said Board and to abandon the construction of
177 this line from Sutphin Road to Springfield Road which is so urgently demanded by the people residing in that territory.

Further answering the petition herein alleges that the "streets involved," to wit, Lambertville Avenue, Spangler Street, Brinkerhoff Avenue, Smith Street, Ulster Avenue, Westchester Avenue and 117th Avenue, have been fully prepared by The City of New York for the construction of said railroad and said streets and avenues are now completely ready for such construction, and the President of the Borough of Queens was on February 16, 1917, and ever since has been, willing to give to the Manhattan and Queens Traction Corporation, in conformity with the said contract of October 29, 1912, a location for its tracks on said streets and avenues and also to give the necessary consents to the New York Telephone Company and the New York and Queens Electric Light and Power Company for a re-location of their poles on said Westchester and 117th Avenues and to assist in every way the said companies to arrange for such re-location.

That under the Railroad Law the said Traction Corporation has the arbitrary right to build its line across the railroad of the Long Island Railroad where it crosses said avenues and without getting the permission of said Long Island Railroad and by taking the steps in said Railroad Law prescribed.

Wherefore the City of New York requests that the petition of the receivers herein be dismissed and the temporary stay herein vacated, with costs and expenses of this proceeding.

WILLIAM P. BURR,
Corporation Counsel.

178 *Answer of The City of New York to Petition.*

District Court of the United States for the Eastern District of New York.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR C. Hume, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

STATE OF NEW YORK,
County of New York, ss:

George P. Nicholson, being duly sworn, says that he has been duly designated as Acting Corporation Counsel of The City of New York, and as such that he is an officer of the Respondent, The City of New York, in the above-entitled action. That the foregoing answer is true to his knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. Deponent further says that the reason why this verification is not made by the Respondent, The City
179 of New York, is that it is a corporation; that the grounds of his belief as to all matters not therein stated upon his knowledge are as follows: Information obtained from the books and records of the Law Department and other departments of the city government, and from statements made to him by certain officers or agents of the Respondent, The City of New York.

GEO. P. NICHOLSON.

Sworn to before me this 20th day of March, 1918.

MATTHEW F. DUFFY,
[SEAL.] *Notary Public, Kings Co., No.* 138.

Kings Co Register's No. 9080.
New York Co. Clerk's No. 61.
New York Co. Register's No. 9060.
Bronx Co. Clerk's No. 4.
Bronx Co. Register's No. 906.
Queens Co. Clerk's No. 1201.
Term expires March 30, 1919.

(Maps referred to as Exhibits A, C and F are Nos. 4, 5 and 6 respectively in Vol. II—Exhibits—hereof.)

180 *Exhibit "B," Attached to Answer—Affidavit of Joseph L. Ashmead, Verified January* 29, 1918.

District Court of the United States, Eastern District of New York.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR C. Hume, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

STATE OF NEW YORK,
City and County of New York, ss:

JOSEPH L. ASHMEAD, being duly sworn, says:

I reside at 117 Cedar Avenue, Richmond Hill Borough of Queens, City of New York, and am an Assistant Engineer connected with the Bureau of Highways of The City of New York.

I had full charge of the regulating and grading at the legal grade and full width of Lambertville Avenue between Sutphin Road
181 and Spangler Street; Spangler Street between Lambertville Avenue and Brinkerhoff Avenue; Brinkerhoff Avenue between Spanglar Street and Smith Street; Smith Street between Brinkerhoff Avenue and Ulster Avenue; Ulster Avenue between Smith Street and Merrick Road, excepting the following numbered parcels as shown on the damage map of Lambertville Avenue: Nos. 24, 25, 33, 94, 115, 107 and 119.

The blueprint of the plan and profile map dated February 21, 1916, is a corrected copy of the original plan and profile of the regulating and grading map filed in the office of the President of the Borough of Queens and the map according to which the regulating and grading of the above mentioned avenues and streets was done. That said regulating and grading of said streets according to said map was finished on December 9, 1916 and that all the grades shown on said plan and profile are the grades and profiles mentioned on the present final map of The City of New York, excepting that portion of Lambertville Avenue situated between Freehold Street and Medford Street, where the grade is a temporary one and that this section of Lambertville Avenue has been brought temporarily to the grade of the bed of the old Southern Railroad, now owned and controlled by the Long Island Railroad Company and known as the Southern Division thereof.

That all the regulating and grading that it was possible to do on Lambertville Avenue was done, but the portions of the new width of the street comprised in the above numbered parcels were ex-

ded for the reason that there were houses built on them which had not at that time been removed.

182 That excepting the above mentioned parcels, all of the above named streets were regulated and graded to their full width and length as shown on said blueprint dated February 21, 1918.

It is the unvarying rule of The City of New York that when a street is regulated and graded, all poles are removed back to an established line about one and one-half feet inside of the established curb line and in the doing of the work of regulating and grading the above mentioned streets and avenues all poles were thus removed back to about one and one-half feet inside of the established curb line.

The above regulating and grading was done on the above mentioned avenues and streets from Sutphin Road to Merrick Road.

JOSEPH L. ASHMEAD.

Sworn to before me this 29 day of January, 1918.

ANTHONY McCARTHY,
Notary Public, Bronx County, No. 5.

Bronx Co. Register's No. 908.
New York Co. Clerk's No. 59.
New York Co. Register's No. 9060.
Kings Co. Clerk's No. 35.
Kings Co. Register's No. 9031.
Queens Co. Clerk's No. 1211.
Term expires March 30, 1919.

(Map referred to, dated Feb. 21, 1916, is No. 7 in Vol. II—Exhibits—hereof.)

183 *Exhibit "D," Attached to Answer—Letter, Dated January 29, 1918, from J. F. Keany to Vincent Victory.*

The Long Island Railroad Company.

General Office, Pennsylvania Station.

Joseph F. Keany, General Solicitor.

New York, January 29, 1918.

Vincent Victory, Esq.,
Assistant Corporation Counsel,
Municipal Building,
Manhattan Borough,
New York City.

DEAR SIR:

I enclose to you herewith copy of an agreement prepared by me July 16th, 1917, to be entered into between this Company and the Manhattan and Queens Traction Corporation authorizing the

Traction Corporation to carry its street railway across our Old Southern Division at Lambertville Avenue, Jamaica, on a temporary trestle.

This proposed agreement was forwarded to Mr. A. B. Collins, Engineer Maintenance of Ways of the Traction Corporation on July 17th. On August 14th Mr. Collins called upon our Mr. Carruthers and the same day wrote him, objecting to the form of the indemnity clause in the agreement (paragraph Sixth). We did not feel disposed to in any way modify this clause and the agreement was never executed by the Traction Corporation.

The officers of this Company were reluctant to agree to
184 the installation of such a crossing as is provided for but gave their consent to accomodate the public. They are still willing that the crossing be made upon the conditions set forth.

Yours truly,

J. F. KEANY,
General Solicitor.

Exhibit "E," Attached to Answer—Proposed Agreement Mentioned in Foregoing Letter.

Agreement, made this — day of ——, 1917, between The Long Island Railroad Company, a New York corporation, hereinafter called the "Railroad Company," party of the first part, and Manhattan and Queens Traction Corporation, a New York corporation, hereinafter called the "Traction Corporation," party of the second part.

Whereas, the Railroad Company owns and operates the Old Southern Division of its railroad, consisting of a right of way with two tracks and appurtenances thereon constructed, through Jamaica, in the Borough of Queens, in the City of New York; and

Whereas, a proceeding is now pending for the opening of Lambertville Avenue in Jamaica, which avenue when legally and physically opened will cross under the Old Southern Division of the Railroad Company aforesaid as set forth in an order of the Public Service Commission of the State of New York for the First District, dated November 19th, 1912, in its case No. 1567; and

185 Whereas, the Traction Corporation has been granted a franchise by The City of New York for the construction of its trolley railroad on Lambertville Avenue aforesaid and desires to construct its said trolley railroad along said avenue and across the Old Southern Division of the Railroad Company before the avenue is physically constructed and carried under said Old Southern Division of the Railroad Company; and

Whereas, the Railroad Company is willing that said trolley railroad of the Traction Corporation be carried over its Old Southern Division upon a temporary trestle to be constructed and maintained in accordance with the provisions of this agreement hereinafter set forth:

Now, therefore, this agreement witnesseth:

That for and in consideration of the sum of one dollar ($1) paid by the Traction Corporation to the Railroad Company and other good and valuable considerations, the receipt whereof is hereby acknowledged and the obligations hereinafter set forth, the parties hereto agree as follows:

First. The Railroad Company agrees that the Traction Corporation may construct and maintain and thereafter, until its removal, operate its railroad over a temporary trestle which shall span the tracks of the Old Southern Division of the Railroad Company within the lines of Lambertville Avenue as said avenue is laid down upon the map of The City of New York.

Second. The Traction Corporation agrees that said temporary trestle shall be constructed in accordance with and as shown
186 upon the plan attached hereto marked "Exhibit A" and entitled "Manhattan & Queens Traction Corp. Plan and Profile showing layout of proposed trestle and ramps on Pacific Street, Jamaica, L. I., D'W'G A-22." Any work required to be done and not shown upon said "Exhibit A" shall be shown upon an additional plan or plans and all such additional plans shall, before the work shown thereon is commenced, be approved by the Chief Engineer of the Railroad Company, the Public Service Commission of the State of New York for the First District and The City of New York.

Third. Said temporary trestle shall be constructed and with the tracks and other appurtenances of the Traction Corporation shall be maintained in a safe and proper condition by and at the sole expense of said Traction Corporation.

Fourth. The work of construction shall be commenced and carried on at such time or times and in such manner as shall be satisfactory to the General Manager of the Railroad Company, and all repairs to said structure where it crosses the property and tracks of the Railroad Company shall be made at such times and in such manner as may be satisfactory to said General Manager.

Fifth. When the Railroad Company shall elevate the tracks of its Old Southern Division and carry Lambertville Avenue under said tracks and right of way in the manner set forth in the order of the Public Service Commission of the State of New York for the First District, dated November 19th, 1912, and in its case No.
187 1,567 or as required by any modification thereof and the plans approved by said Public Service Commission The Traction Corporation shall upon ten days' notice in writing from the Railroad Company and at its own sole expense remove its temporary trestle, track and appurtenances from the right of way and property of the Railroad Company and from Lambertville Avenue in such manner that they shall in no way interfere with the work of elevating the tracks of the Railroad Company and carrying Lambertville Avenue thereunder, and in the event that the Traction Corporation

shall not so remove its temporary trestle, tracks and appurtenances the Railroad Company may remove them, and in such event the Traction Corporation agrees to repay to the Railroad Company the expense of such removal with fifteen per cent. additional for organization, accounting and use of hand-tools.

Sixth. The Traction Corporation agrees to indemnify and save the Railroad Company harmless against and from any and all loss which it may suffer in any way growing out of the construction, maintenance or use of said temporary trestle, tracks and appurtenances in Lambertville Avenue and across its Old Southern Division as provided for herein and the operation of its railroad thereover, whether said loss or damage accrue by reason of the negligence of the Traction Corporation, its officers, agents, servants, or employees or the negligence of the Railroad Company, its officers, agents, servants or employees or otherwise, and further agrees to repay to the Railroad Company, upon the rendition of bills therefor, any expense to which it may be put in erecting and maintaining bridge
188 warnings for said temporary trestle or otherwise arising by reason of the construction, maintenance or removal of said temporary trestle, tracks and appurtenances.

Seventh. The Traction Corporation agrees to secure the approval of this agreement by the Public Service Commission of the State of New York for the First District and The City of New York, and further agrees to procure at its own expense any necessary consents, orders or authority from the Public Service Commission of the State of New York for the First District, The City of New York, or any other person, corporation, board or authority, which shall be required for the construction, maintenance or use of the structure herein provided for or for the performance of this agreement.

In witness whereof, the parties hereto have caused these presents to be executed by their proper officers thereunto duly authorized and their corporate seals to be hereunto affixed and attested the day and year first above written.

THE LONG ISLAND RAILROAD COMPANY,

By ——, ——,
President.

Attest:

—— ——
Secretary.

MANHATTAN AND QUEENS TRACTION CORPORATION,

By —— ——,
President.

Attest:

—— ——,
Secretary.

189 STATE OF NEW YORK,
County of New York, ss:

On the — day of ——, 1917, before me personally came Ralph Peters to me known; who, being by me duly sworn, did depose and say, that he resided in Garden City, New York, that he is the President of The Long Island Railroad Company, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

——.

STATE OF NEW YORK,
County of ——, ss:

On the — day of ——, 1917, before me personally came —— —— to me known; who, being by me duly sworn, did depose and say, that he resided in —; that he is the President of the Manhattan and Queens Traction Corporation, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

——.

190 EXHIBIT "F" ATTACHED TO ANSWER.

Affidavit of Frank B. Tucker, Verified March 6th, 1918.

United States District Court, Eastern District of New York.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR CARTER HUME, Receivers for Defendant, Relative to the Franchise and Property of the Defendant.

STATE OF NEW YORK,
City and County of New York, ss:

Frank B. Tucker, being duly sworn, deposes and says that he resides at 72 East 93rd Street, in the Borough of Manhattan, City of New York, that he is an engineer in the Topographical Bureau of the office of the President of the Borough of Queens, and has been since June, 1905;

191 That he is familiar with the maps and records of the Topographical Bureau of the office of the President of the Borough of Queens, and particularly with a map entitled, "Map showing a change in the street system heretofore laid out by altering the grades of Ulster Ave., from Smith St. to Westchester Ave., Westchester Ave., from Ulster Avenue to 117th Ave., 117th Ave., from Westchester Ave. to Dearborn Ave., and Dearborn Ave., from 117th Ave. to New York City Line, in the Fourth Ward. New York, August 14th, 1915," adopted by the Board of Estimate and Apportionment November 12, 1915, approved by the Mayor November 18, 1915, and filed with the Clerk of Queens County February 14, 1916. A blue print of said map, properly colored, is attached hereto and made a part hereof;

That the grades established by this map superseded grades previously established, conforming approximately to the present user grades of the roadway of old Central Avenue (except between Rutland Street and Glenham Street, where they conform with the sidewalk improvements, the maximum variation from the user roadway grades being about 1½ feet) and were established to facilitate the construction of the Manhattan and Queens Traction Corporation's railroad;

That title to old Central Avenue, lying within the lines of Westchester Avenue, 117th Avenue and Dearborn Avenue, is in the City of New York, the portion between Merrick Road and Farmers Avenue having been acquired to a width of 3 rods (49½ feet) by an agreement dated January 13, 1860, and filed with the Town
192 Clerk March 20, 1860. A copy of this agreement is hereto annexed. This agreement gives the City a prior right-of-way across the tracks of the Montauk Division of the Long Island Railroad, which was not built until 1873;

That the portion of Central Avenue between Farmers Avenue and Springfield Road is in the City, having been acquired to a width of 3 rods (49½ feet) in 1837-1838, damages therefor being awarded July 17, 1837, and paid February 5, 1838;

That the title in fee to all of old Central Avenue between Merrick and Springfield Roads, except the crossing of the Montauk Division of the Long Island Railroad, is in the City in accordance with a resolution of the Board of Estimate and Apportionment on February 16, 1917, Calendar No. 123, which vested title in all the real property lying within the lines of Damage Parcels Nos. 8, 29, 46, 56, 140 to 150, inclusive, 152, 180 and 199, shown on the "Draft Damage Map in the matter of acquiring title to Ulster Avenue extending from Smith Street to Westchester Avenue, Westchester Avenue extending from Ulster Avenue to 117th Avenue, 117th Avenue extending from Westchester Avenue to Dearborn Avenue and Dearborn Avenue extending from 117th Avenue to the City Line," a copy of which is hereto attached and made a part hereof;

That following the acquisition of title to old Central Avenue there must necessarily have been a certain amount of grading done upon the road to open it for traffic. The first record to deponent's knowl-

edge, however, of work thereon appears on Page 65, Resolu-
193 tion No. 2 of the proceedings Board of Supervisors of Queens County for the year 1891, where mention is made of a number of roads to be improved by grading, regulating and macadamizing to a width of 18 feet, and a depth to be recommended by the engineer and approved by the Board, one of the roads being old Central Avenue, from Farmers Avenue to Springfield Road. Mention is made on Page 201 of the Supervisors' proceedings of 1893 of a payment of $9,200.80 for highway improvements on Central Avenue, and a further payment of $827.85 for the same purpose appears on Page 259 of the same year's proceedings;

That according to Resolution No. 36, Page 833 of the proceedings Board of Supervisors, Queens County, 1896, old Central Avenue, from Farmers Avenue to Merrick Road, was one of a number of streets to be graded and macadamized from a bond issue of $450,000;

That the source of much of your deponent's information as to statements herein contained are the minutes of the Board of Estimate and Apportionment, the proceedings of the Board of Supervisors of Queens County and the old records of the Town of Jamaica. Bound copies of the first two are in the office of the Topographical Bureau of the Borough of Queens. The town records are in the custody of the Comptroller.

Your deponent has searched in the Topographical Bureau of Queens for "damage map dated May 18, 1916," mentioned in paragraph XIII of the petition herein and cannot find such a map and he is of opinion that the map referred to is the damage map of
194 Ulster, Westchester, 117th and Dearborn Avenue, dated March 31, 1915.

FRANK B. TUCKER.

Sworn to before me this 6th day of March, 1918.

ANTHONY McCARTHY,
Notary Public, Bronx County, No. 5.

Bronx Co. Register's No. 908.
New York Co. Clerk's No. 59.
New York Co. Register's No. 9060.
Kings Co. Clerk's No. 35.
Kings Co. Register's No. 9031.
Queens Co. Clerk's No. 1211.
Term expires March 30, 1919.

(Blue print referred to in foregoing affidavit, p. 191, is No. 6, and Draft Damage Map, in four sections, referred to on p. 192 is numbered 8, 9, 10 and 11 in Vol. II—Exhibits—hereof.)

195 *Copy of Deed, Executed January 13, 1860, from Nickolas S. Everett et al., to the Town of Jamaica, Attached to Foregoing Affidavit of Frank B. Tucker.*

Central Ave.

Farmers Ave. to Merrick and Jamaica Plank Road.

Map 618, Drawer 4, Vault.

Nickolas S. Everett, Benjamin Carpenter and Nathaniel Ludlum

to

Commissioners of Highways, Town of Jamaica.

Witnesseth: That whereas a highway has been duly laid out, to the width of Three rods by the Commissioners of Highways of the said Town of Jamaica through and upon the lands of the parties of the first part; particularly described on a Map thereof Entitled a Map of road three rods wide; leading from the Junction of the Highway leading to Springfield in the said town of Jamaica, near the House of said Nickolas S. Everett, thence running in a Northwesterly and Westerly course from said Junction through lands of the said parties of the first part, until it comes to the Merrick and Jamaica Plank Road, near the one mile Mill in said town; Surveyed September, 1859, by Ezra W. Conklin; and filed in the town Clerk's office, in said town of Jamaica.

196 And whereas the said Commissioners of Highways of said — have agreed with the said Nickolas S. Everett, Benjamin Carpenter and Nathaniel Ludlum; for the taking of lands belonging to them for said Highway; for the following Sums Set opposite their respective names.

To Nickolas S. Everett	$74.25
To Benjamin Carpenter	93.00
To Nathaniel Ludlum	437.00

Now therefore know ye, that we *the* Nickolas S. Everett, Benjamin Carpenter, and Nathaniel Ludlum, the said parties of the first part, for and in consideration of the sums above mentioned, the receipt whereof is hereby acknowledged, do have and hereby grant and convey unto the said parties of the second part, the premises above described (on said Map) to and for the purposes of said road and Highway as above mentioned.

In witness whereof, the said parties have hereunto set their hands and seals this Thirteenth day of January, 1860.

NATHANIEL LUDLUM.
NICHOLAS S. EVERETT. [SEALS.]
BENJAMIN CARPENTER.

Sealed and delivered in the presence of
ABRAHAM A. HENDRICKSON.

Filed in the office of the Town Clerk this 20th day of March, 1860
by D. S., Jr., T. C.
(Recorded.)

197 EXHIBIT "G" ATTACHED TO ANSWER.

Letter, Dated February 4, 1918, from P. D. Honeyman to Charles U. Powell.

New York Telephone Company,

81 Willoughby Street.

Brooklyn, N. Y., February 4, 1918.

V. V. W.
P. D. Honeyman, Division Plant Supt.

Subject: Proposed trolley line of the Manhattan and Queens Traction Corporation on Lambertville Avenue, Spangler Street, Bronkerhoff Avenue, Smith Street, Ulster Avenue, Westchester (Old Central Avenue, 117th Street and Dearborn Avenue.

In Answer to: Your Letter of Jan. 25, 1918.

Mr. Charles U. Powell,
Engineer in Charge,
Topographical Bureau,
Borough of Queens,
Municipal Bldg., L. I. City.

DEAR SIR:

Our records indicate that the Telephone Company maintains a line of poles and an aerial cable on the north side of Westchester Avenue (old Central Avenue), South Jamaica, from the Merrick Road to a point about 100 feet east of the Lond Island Railroad, and several twisted pair wires along the continuation of this street from the Long Island Railroad to Springfield Boulevard on poles belonging to the New York and Queens Electric Light and Power Company,
198 and to the Postal Telegraph Company. The lines of Westchester Avenue are also crossed by aerial cables of the Telephone Company at Merrick Road and Farmers Avenue and by a subway at Merrick Road.

We are willing to relocate and reconstruct such of the above plant as is necessary to permit the building of the above trolley line, provided that the necessary municipal permits can be secured and that the Manhattan and Queens Traction Corporation is willing to bear the cost of the work. We wrote this Corporation on October 1st, 1917, that we were willing to relocate and reconstruct such of our plant as

would be interfered with on Lambertville Avenue and Spangler Street, Jamaica, by the construction of its line upon receipt of its order covering the actual cost of the work, plus 10% supervision on material and 15% supervision on labor, estimating the cost of this portion of the work to be approximately $675.00. An agreement based on the terms of the above letter was executed on the part of the Telephone Company and forwarded to the Traction Corporation on November 27, 1917, but it has not as yet been executed or returned by that Corporation.

During the latter part of September, 1917, Mr. A. B. Collins, Engineer of Maintenance of Ways and Structures of the Traction Corporation, gave us verbal authority to temporarily raise our wires from contact with the new trolley wires on Lambertville Avenue, between Sutphin Road and Norris Avenue, pending the execution of the above agreement and on December 17, 1917, he gave us a written order to do similar work at New York and Lambertville
199 Avenues. Both of these jobs have been completed.

Yours very truly,

P. D. HONEYMAN,
Division Plant Supperintendent.

E. L. P.—B.

EXHIBIT "H" ATTACHED TO ANSWER.

Letter, Dated February 14, 1918, *from Chas A. Barton to Charles U. Powell.*

New York and Queens Electric Light and Power Company,

Borough of Queens,

City of New York,

February 14, 1918.

Mr. Charles U. Powell,
Engineer In Charge of Topographical Bureau,
Municipal Building, L. I. City, N. Y.

DEAR SIR:

Your letter of the 25th ultimo, received.

We have no objection to removing our poles and lines to a new, proper, permanent location on old Central Avenue, between the Merrick Road and Springfield Boulevard, so as to permit the building of an extension to the Manhattan and Queens Traction Corporation's track, provided we can obtain all necessary permits from the City Departments having jurisdiction; and provided further, that the Manhattan and Queens Traction Corporation, or its Re-
200 ceivers, will pay all expense incurred by us for material and labor in making such changes.

Yours very truly,

(Sd.) CHAS A. BARTON,
General Sales Agent.

C. A. B./McG.

Reply *of the Receivers to the Answer of The City of New York, Filed March* 27, 1918.

In the District Court of the United States for the Eastern District of New York.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR C. Hume, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

Reply of William R. Begg and Arthur C. Hume, Receivers of Manhattan and Queens Traction Corporation, to the answer of
201 The City of New York, filed herein March 20th, 1918, to the petition of the Receivers herein, upon information and belief.

I. In reply to the "First" paragraph of said answer, the date "December 3, 1917," mentioned in folio "8" of the petition, should be "December 3, 1912."

II. In reply to paragraph "Second," as to the denials of allegations in paragraph "VI" of the petition, the report of the Bureau of Franchises of the Board of Estimate and Apportionment, dated May 1st, 1916, to the Mayor, and signed by Harry P. Nichols, Engineer, Chief of said Bureau, stated:

"As the Manhattan and Queens Traction Corporation has complied with the provisions of the franchise contract relative to the commencement of operation along Sutphin Road to Lambertville Avenue, on or before May 1, 1916, it is recommended that the papers relative to this matter and to the complaint of the South Side Civic Association, be filed."

III. In reply to paragraph "Third," as to the denial of allegations in paragraph "XI" of the petition, the minutes of meeting of Board of Estimate and Apportionment for February 16th, 1917, at page 301, under matters considered by unanimous consent, contain the following:

"The following matters not on the calendar for this day were considered by unanimous consent."

202 Then follow minutes of the proceedings relative to the adoption of the resolution set forth in paragraph "XII" of the petition. The City admits the allegations of paragraph

"XII" of the petition, in which paragraph it is alleged that the Manhattan and Queens Traction Corporation did not have any notice of said proposed action whatsoever, nor an opportunity to be heard.

IV. In reply to the denial of the allegation in paragraph "XXI" of the petition, contained in paragraph "Fourth" of the answer, the application of the Manhattan and Queens Traction Corporation for an extension of time was presented to the Board of Estimate "for consideration" for the first time on October 19th, 1917. The application was on the calendar for September 21st, 1917, merely for reference to the Bureau of Franchises, which is the first step prior to consideration by the Board of Estimate.

V. In paragraph "Ninth" of the answer it is admitted "that The City of New York did not acquire title in fee to the roadbed of the Long Island Railroad Company where it crosses Lambertville Avenue near Carlisle Street; that said Avenue is not physically opened across the tracks of the Long Island Railroad at this point for vehicular traffic, and said Avenue is graded at that point to a temporary grade." Thus, at this point, title to a portion of Lambertville Avenue, which is a street involved, has not been vested in the City, and a portion (for a block each side of Carlisle Street) of the said street has not been regulated and graded; therefore, Section Seventh, page 5, of the franchise contract, as amended January 21st, 1916, has
203 not been complied with. Submitted with this reply is a copy of the order of the Public Service Commission, marked "A," dated November 19th, 1912, in case number 1567, showing that Lambertville Avenue shall be constructed to pass under the tracks of the Long Island Railroad Company at this crossing.

VI. In reply to paragraph "Tenth" of the answer, the full legal width of Central Avenue, composed of Ulster Avenue, Westchester Avenue, 117th Street and Dearborn Avenue, is eighty (80) feet, as shown on the map, dated August 14th, 1915, annexed to the answer of the City. Title has been vested only to the travelled portion thereof, and only as far as Springfield Road, according to the minutes of the Board of Estimate and Apportionment of February 16th, 1917. A report of Nelson P. Lewis, Chief Engineer, dated February 14th, 1917, appears in said minutes, at page 888, in which it is stated:

"The traveled portion of the road between Springfield Road and the City Line is covered by one additional damage parcel, but it is understood that the Borough President does not at this time care to have title vested in any portion of the street beyond Springfield Road."

The City's answer admits that title only "to the width of said old Central Avenue" is vested in the City, and alleges that the width of "old" Central Avenue was fifty (50) feet. Title in fee to Central Avenue is not vested in the City beyond Springfield Road, and it is not vested in the City to the full legal width of Central Avenue,

eighty (80) feet. That there is no damage parcel for the
204 land in Westchester Avenue at the crossing of the Montauk Division of the Long Island Railroad. (See damage map annexed to City's answer.) The City admits that a line of poles are on each side of the asphalt on old Central Avenue; therefore, Central Avenue is not regulated and graded. The affidavit of Joseph L. Ashmead, verified January 29th, 1918, annexed to the City's answer, avers, at folio "6," as follows:

"It is the unvarying rule of The City of New York that when a street is regulated and graded, all poles are removed back to an established line about one and one-half feet inside of the established curb line, and in the doing of the work of regulating and grading the above mentioned streets and avenues all poles were thus removed back to about one and one-half feet inside of the established curb line."

Denies that the Traction Corporation is or was under any duty to remove said poles.

VII. In reply to paragraph "Eleventh," "the streets involved" are those set forth in paragraph "VIII" of the petition, which is admitted, and "the streets involved," referred to in the amendment of the franchise contract, dated January 21st, 1916, are the said streets referred to in paragraph "VIII" of the petition, as shown on the maps annexed to the answer of the City, and the regulating and grading referred to means the regulating and grading thereof to their legal grade and full width, as planned by the City on January 21, 1916.

205 Manhattan and Queens Traction Corporation did not enter into any contract with the Long Island Railroad Company relative to the crossing on Lambertville Avenue, as it would not consent to the onerous terms insisted upon by the Long Island Railroad.

Under the amendment to the franchise contract of the Manhattan and Queens Traction Corporation, dated January 21st, 1916, the Traction Corporation is not required to remove the poles on Central Avenue, but such removal is part of the regulating and grading of the said street.

As admitted by the City in its answer, title to all portions of the streets involved in the extension provided for in the resolution of February 16th, 1917, had not been vested in The City of New York on that date, and title to certain portions of the said streets are not now vested in The City of New York, and that on said date all portions of the said streets involved were not regulated and graded to their legal grade and full width.

The Traction Corporation, under its franchise contract, is not required to take any condemnation or other proceedings to prepare the way for the construction of its railway, but under the amendment of the franchise, dated January 21st, 1916, The City of New York must prepare the way.

Upon information and belief, the allegations contained in paragraph "Eleventh" of the said answer, that "the streets involved,"

used in the amendment of January 21st, 1916, refers solely to the streets and portions of the streets actually owned by The
206 City of New York, and not those on the final map of The City of New York, are denied. The allegations therein that the grading of Lambertville Avenue to a temporary grade, in the vicinity of the tracks of the Long Island Railroad Company, was sufficient to justify the Board of Estimate and Apportionment on February 16th, 1917, in directing the construction of the said railway from Sutphin Road to Springfield Road, are denied.

Upon information and belief, Central Avenue, composed as aforesaid, has not been regulated and graded.

Upon information and belief, the allegations at folio "35" of the answer, that "old Central Avenue," between Merrick Road and Farmers Avenue, was acquired in fee by the Commissioners of Highways of the Town of Jamaica, are denied, and the allegations in the paragraphs at folio "36" of the answer are denied.

Upon information and belief, that the New York Telephone Company and the New York and Queens Electric Light and Power Company were and are not willing that their poles on said Central Avenue be removed, unless all expenses are paid, and that such poles, when removed, are given a permanent location, which must be outside of the eighty (80) foot width of said avenue.

Upon information and belief, that the allegations in the paragraph of the answer at folios "42" and "43," that the streets have been fully prepared by The City of New York for the construction of the said railroad, and are now completely ready for construction, are denied. That under the facts set forth on February 16th, 1917, a permanent location could not and cannot be given to the
207 tracks of the Manhattan and Queens Traction Corporation on all of the said "streets involved."

That it is admitted by the City's answer, in the affidavit of Frank B. Tucker, verified March 6th, 1918, that title in fee to old Central Avenue is not vested in the City at the crossing of the Montauk Division of the Long Island Railroad. The purported conveyance from one Everett to the Commissioners of Highways of the Town of Jamaica, dated March 20th, 1860, only grants a street use, and does not convey a fee.

VIII. The Manhattan and Queens Traction Corporation is insolvent, as appears by the preliminary report of the Receivers filed with this court, which report is made part of the petition herein. For the months of November and December, 1917, and for the months of January and February, 1918, during which months your Receivers have managed and operated the street surface railway of the Manhattan and Queens Traction Corporation the receipts from the operation of the said railway were not sufficient to pay the actual operating expenses of said railway, including fixed payments under the railway's franchise and taxes, but not including any interest on any investment liability. This does not take into consideration replacement or amortization fund. Submitted with this reply is an affidavit of William W. Lowe, the manager, as to the above. The

gross income for January, 1918, was seventeen thousand three hundred thirty-three and 50/100 dollars ($17,333.50); for February, 1918, sixteen thousand three hundred fifty-five and 79/100 dollars ($16,355.79); the operation, maintenance and taxes for January, 1918, were nineteen thousand one hundred seventy-eight
208 and 26/100 dollars ($19,178.26), and the operation, maintenance and taxes for February, 1918, were seventeen thousand eight hundred seventy-four and 77/100 dollars ($17,874.77). There was no net income, and the loss for these two months respectively was one thousand seven hundred forty-four and 76/100 dollars ($1,744.76) and one thousand five hundred eighteen and 98/100 dollars ($1,518.98).

IX. From the proposed resolution attached to the affidavit of Vincent Victory, verified February 13th, 1918, filed herein, with an order to show cause of that date, it is shown that The City of New York and its Board of Estimate were prepared to carry out the threat to take the entire franchise and property of the Manhattan and Queens Traction Corporation, without compensation and without any proceeding at law or in equity.

Wherefore, your Receivers respectively ask, in order that the franchises and property of the Manhattan and Queens Traction Corporation, placed in their hands, be preserved and protected, as well as the rights of the creditors of that Corporation and of the travelling public served by your Receivers, that the injunction contained in the order of this court, dated December 19th, 1917, be made permanent.

Dated, New York, March 27th, 1918.

WILLIAM R. BEGG,
ARTHUR C. HUME,
Receivers of the Manhattan and Queens Traction Corporation.

209 STATE OF NEW YORK,
County of New York, ss:

Arthur C. Hume, being duly sworn, deposes and says:

That he is one of the Receivers of the Manhattan and Queens Traction Corporation; that he has read the foregoing reply to the answer of The City of New York, and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. The sources of deponent's knowledge and the grounds of his belief are records, maps, papers and documents, reports of City officials, calendars and minutes of the Board of Estimate and Apportionment of the City of New York, and statements made to deponent by his counsel and by William W. Lowe, manager for the Receivers.

ARTHUR C. HUME.

Sworn to and subscribed before me this 27th day of March, 1918.
EDNA A. STOKES,
[Notarial Seal.] *Notary Public, Kings County No.* 369.

Kings Register No. 9136.
New York County No. 485.
New York Register No. 9389.
My commission expires March 30, 1919.

210 EXHIBIT A ATTACHED TO FOREGOING REPLY.

A.

At a Stated Meeting of the Public Service Commission for the First District, Duly Held at its Office, No. 154 Nassau Street, in the Borough of Manhattan, City and State of New York, on the 19th day of November, 1912.

Present:
William R. Willcox, Chairman.
Milo R. Maltbie,
John E. Eustis,
J. Sergeant Cram, Commissioners.

Case No. 1567.

In the Matter of the Application of the CITY OF NEW YORK, Relative to opening Lambertville Avenue from Sutphin Road to Merrick Road in the Fourth Ward, Borough of Queens, City of New York, Across the Tracks of the Montauk Division of the Long Island Railroad Company.

Final Orders and Determination as to Grades of New Street.

An application having been made by the City of New York to this Commission by resolution of the Board of Estimate and Apportionment adopted September 19, 1912, pursuant to Section 90 of the Railroad Law, to determine whether a certain proposed new street, namely Lambertville Avenue (sometimes called Pacific
211 Street) should pass over or under or at grade of the tracks of the Montauk Division of the Long Island Railroad Company in the Fourth Ward, Borough of Queens, and a hearing having been had on such application on October 25, 1912, and on November 8, 1912, before Honorable J. Sergeant Cram, Commissioner, Norman J. Marsh, Assistant Corporation Counsel appearing for the City of New York, C. L. Addison appearing for the Long Island Railroad Company and Arthur Du Bois, Assistant Counsel, attending for the Commission, and it appearing upon said hearing that notice of such hearing of more than ten days had been given to the Railroad Company, to the City of New York and to the owners of land adjoining the railroad and that part of Lambertville Avenue to be opened and

extended, and it being agreed by all parties who appeared at said hearing that Lambertville Avenue when extended should pass beneath the tracks of the Long Island Railroad Company and that the said tracks of the Long Island Railroad Company should be elevated so as to allow the street to be carried beneath them, and it appearing that notice of intention to construct and extend Lambertville Avenue had been given to the Long Island Railroad Company by the City of New York as required by law, and that the City of New York had duly determined that said extension and construction was necessary.

Now, therefore, it is ordered and determined that

(1) Lambertville Avenue (sometimes called Pacific Street) shall be constructed to pass under the tracks of the Long Island Railroad Company at an elevation of approximately 25 feet above mean high water.

212 (2) That the tracks of the Montauk Division of the Long Island Railroad Company shall be so raised that the elevation of the top of the rail shall be approximately 42.5 feet above mean high water.

(3) That the clearance between the surface of the Street and the lowest member of the bridge carrying the railroad shall be not less than 14 feet.

(4) That the grades of Lambertville Avenue as constructed shall be as shown on the City Map dated March 18, 1912, establishing the lines and grades of Lambertville Avenue from Sutphin Road to Merrick Road in the Fourth Ward, Borough of Queens.

(5) That before actual work is begun on the proposed improvement and not later than January 1, 1913, a suitable temporary passageway be constructed beneath the tracks of the Long Island Railroad Company for pedestrians.

(6) That before the construction of this improvement is begun detailed plans and specifications approved by the Chief Engineer of the Railroad Company and an estimate of the expense of the proposed changes shall be submitted to the Public Service Commission for the First District for approval.

Further ordered and determined that this improvement be carried out in the manner provided by the Railroad Law.

Further ordered that this order take effect at once.

By the Commission.

[L. S.] TRAVIS H. WHITNEY,
Secretary.

213 *Exhibit B, Attached to Foregoing Reply—Affidavit of William W. Lowe, Verified March* 6, 1918.

In the District Court of the United States for the Eastern District of New York.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR C. Hume, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

STATE OF NEW YORK,
County of New York, ss:

William W. Lowe, being duly sworn, deposes and says:

That he is the duly appointed and acting manager of the Manhattan and Queens Traction Corporation, having been appointed in that capacity by the Receivers thereof.

214 That for the months of November and December, 1917, and for the months of January and February, 1918, during which months your deponent has managed and operated the street surface railway of the Manhattan and Queens Traction Corporation for the Receivers thereof, the receipts from the operation of the said railway were not sufficient to pay the actual operating expenses of said railway, including fixed payments under the railway's franchise and taxes, but not including any interest on the investment liability.

WM. W. LOWE.

Sworn to before me this 6th day of March, 1918.

EDNA A. STOKES,
Notary Public, Kings County, No. 369.

Kings Register No. 9136.
New York County No. 485.
New York Register No. 9389.
My Commission expires March 30, 1919.

215 *Affidavit of William W. Lowe, Verified April 6, 1918, and Filed on April 15, 1918.*

In the District Court of the United States for the Eastern District of New York.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR C. Hume, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

STATE OF NEW YORK,
County of New York, ss:

William W. Lowe, being duly sworn, deposes and says:

That he is the duly appointed and acting manager of the Manhattan and Queens Traction Corporation, having been appointed in that capacity by the Receivers thereof.

216 That your deponent is experienced in the construction and operation of street surface railways.

That the City of New York, on March 27, 1918, submitted certain maps annexed to the affidavit of Clifford B. Moore, verified March 27, 1918, which purport to show that the City of New York could give the tracks of the Traction Corporation a permanent location on the streets shown on said maps. Deponent, after making an examination of these maps, made a personal examination of Central Avenue, which is composed of Ulster, Westchester and One Hundred and Seventeenth Avenues, in order to determine whether said maps showed the exact physical condition of Central Avenue.

Deponent in his examination of Central Avenue, on April 5, 1918, found the following:

In the first place, the posts supporting the railroad gates placed on each side of the right-of-way of the Long Island Railroad Company, at the Montauk Division, where the tracks thereof cross Westchester Avenue are less than six (6) feet from the edge of the asphalt paving. These posts would interfere with the construction of a street railway track on either side of the asphalt, unless such track were laid in the asphalt.

Deponent's personal investigation shows that there are between fifteen and twenty large trees along Central Avenue on the north side thereof, with limbs overhanging Central Avenue, between Merrick Road and Watson Avenue, which would interfere with the construction of a trolley line, and which limbs would have to be removed.

217 Deponent's personal investigation further shows that there are four trees, with overhanging limbs, on the north side of Central Avenue, between the Montauk Division of the Long Island Railroad Company and Caxton Avenue, the trunks of which trees vary from seven and one-half to eight and one-half feet from the asphalt; these would have to be removed before a track could be constructed as proposed; also there is a concrete curb line in Central Avenue between said Montauk Division and Farmers Avenue, said curb line being only eight feet from the asphalt.

Further there is a concrete entrance, which would have to be removed, running into the hook and ladder house of "Hook and Ladder Company No. 1, St. Albans," located on the north side of Central Avenue about one hundred feet west of Farmers Avenue. On the corner of Central Avenue and Farmers Avenue, there are two poles and a police booth which are directly in the way of the proposed construction.

That on the north side of Central Avenue, between Farmers Avenue and Springfield Road there are at least twenty-five poles of the New York Telephone Company, which would interfere with the construction of railway as proposed, and which would have to be removed. There are also a number of fire hydrants and water gates which would have to be removed. It would be necessary to remove said poles, hydrants, etc., for the reason that the clearance would not be sufficient for safe operation. All poles on the north side of Central Avenue between said points are not represented on the map submitted by the City. The poles actually in Cen-
218 tral Avenue vary in distance from the edge of the asphalt, some of said poles being less than six feet distant from the edge of the asphalt.

That Central Avenue is not regulated and graded so that tracks could be built at the legal grade without making fills and cuts.

WM. W. LOWE.

Sworn to before me this 6th day of April, 1918.

EDNA S. STOKES,
Notary Public, Kings County No. 369.

Kings Register No. 9136.
New York County No. 485.
New York Register No. 9389.
My Commission expires March 30, 1919.

219 *Affidavit in Rebuttal of Clifford B. Moore, Verified March 27, 1918.*

United States District Court, Eastern District of New York.

GAS AND ELECTRIC SECURITY COMPANY

against

MANHATTAN AND QUEENS TRACTION CORPORATION.

In the Matter of the Application of WILLIAM R. BEGG and ARTHUR Hume, as Receivers of the Manhattan and Queens Traction Corporation, for an Order Restraining the Board of Estimate and Apportionment, etc.

STATE OF NEW YORK,
City of New York,
County of Queens, ss:

Clifford B. Moore, being duly sworn says: I am the Consulting Engineer for the Borough of Queens and I have been requested to have prepared a map or plan showing the location which the President of the Borough of Queens is willing to grant to the Manhattan & Queens Traction Corporation under its franchise of October 29, 1912, on Lambertville Avenue, Spangler Street, Brinkerhoff Avenue, Smith Street, Ulster Avenue, Westchester Avenue and 117th Avenue.

I have had prepared such a map and the same is hereto
220 attached and made a part thereof.

On Lambertville Avenue between Sutphin Road and a point about 125 feet east of Hoboken Street, the location upon this map is permanent as to lines and grades. Between the point 125 feet east of Hoboken Street and Medford Street the temporary overhead crossing of the Long Island Railroad occurs. This location is temporary only.

Between Medford Street and Spangler Street the location shown upon the map is permanent as to lines and grades.

Upon Spangler Street between Lambertville Avenue and Brinkerhoff Avenue; upon Brinkerhoff Avenue between Spangler Street and Smith Street; upon Smith Street between Brinkerhoff Avenue and Ulster Avenue; and upon Ulster Avenue between Smith Street and Merrick Road the location shown is permanent as to lines and grades.

Upon Westchester Avenue, 117th Avenue and Dearborn Avenue, between Merrick Road and Springfield Boulevard, the location is temporary but no change should be rendered necessary within a space of seven years, at least five, and probably more than ten.

Between Merrick Road and Farmers Avenue the track can be laid upon the northerly side of the pavement so that no poles will interfere or will have to be moved except in a single instance.

Between Farmers Avenue and Springfield Boulevard several poles

interfere and may have to be moved but in my opinion no
221 poles need be moved to allow the construction of this railway.

Upon Lambertville Avenue between Sutphin Road and Spangler Street, with the exception of the right of way of the Long Island Railroad, adjacent to Carlisle Street, title to all the roadway is vested in the City of New York.

Spangler Street, Brinkerhoff Avenue, Smith Street, and Ulster Avenue between Lambertville Avenue and Merrick Road—title to the entire streets and avenues is vested in the City.

On Ulster Avenue, Westchester Avenue, 117th Avenue and Dearborn Avenue between Merrick Road and Springfield Boulevard (these constituting Old Central Avenue) title to the entire width of the said Old Avenue is vested in the City.

The location for the line of single track shown on Westchester Avenue and 117th Avenue is within the lines of Old Central Avenue title to which was on February 16, 1917, and for a long time previous thereto, vested in the City of New York.

The map above mentioned and attached hereto has been divided by me into sections for greater convenience.

CLIFFORD B. MOORE.

Sworn to before me this 27th day of March, 1918.

WILLIAM P. BUCKLEY,
Commissioner of Deeds, The City of New York.

(Map, in three sections, above referred to is numbered 12, 13 and 14 in Vol. II—Exhibits—hereof.)

222 *Affidavit in Surrebuttal of Clifford B. Moore, Verified May 3, 1918, and Filed May 7, 1918.*

In the District Court of the United States for the Eastern District of New York.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR Carter Hume, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

STATE OF NEW YORK,
City and County of New York, ss:

Clifford B. Moore, being duly sworn, says:

I am a Consulting Engineer for the Borough of Queens of The City of New York and I have read a copy of the affidavit of William W. Lowe, verified April 6, 1918, and am familiar with the contents thereof.

I have had, in accordance with instructions from the Cor-
223 poration Counsel of The City of New York, Central Avenue inspected to ascertain the correctness of the facts set forth in the said affidavit, and I find the facts to be as follows:

(1) The railroad gate-posts referred to (North side of Central Avenue) are 5.8′ and 6.2′ from edge of asphalt paving.

(2) There are between 15 and 20 good-sized trees as stated, the overhanging branches of which would have to be removed or trimmed.

(3) There are, as stated, 4 trees between L. I. R. R. and Caxton Avenue from 7½′ to 8½′ from edge of asphalt.

(4) There is about 75′ of concrete curb (inferior and partly disintegrated) on the the north side of avenue between the Montauk Division and Farmers Avenue, and about 8′ from asphalt.

(5) There is a concrete runway (20′ to 25′ wide) into the Hook and Ladder Company, just west of Farmers Avenue.

(6) At corner of Farmers Avenue there are two poles as noted, and also a frame police booth (about 5′ x 3′).

(7) On the north side of Central Avenue, between Farmers Avenue and Springfield Road, there are at least 25 poles which would possibly have to be moved, as well as 15 fire hydrants, with watergates, which are about in line with the poles. These poles are not New York Telephone Company poles, as stated in accompanying affidavit, but are marked P. T. Co. (possibly Postal Telegraph Co.).

224 The statement in the said affidavit that "all poles on the north side of Central Avenue, between said points (Farmers Avenue and Springfield Road) are not represented on the map submitted by the City" is true in so far as the fact that each individual pole is not located. The locations were made only at each end of a straight line of poles, so that the poles lying between were considered as being on a straight line between the end ones located.

In the former request for information relative to affidavits at that time submitted, poles only were considered and other features, therefore, were not at that time located.

The railroad gate-posts will not be in the way, as the trolley is obliged, according to the provisions of its contract, to go over the railroad on a viaduct (see code of ordinances app. July 15, 1916, sec. 13, 70, 145 and sec. 469 of the Greater New York Charter).

In regard to the hydrants, they may be removed and a permit for that purpose be issued on application made to the Department of Water Supply, Gas and Electricity for a change of location.

As to the trees, application should be made to the Park Department, who undoubtedly will have them trimmed so that they will not interfere with the wires or structures of the trolley. (See Chapter 453 of Laws of 1902.)

CLIFFORD B. MOORE.

Sworn to before me this 3rd day of May, 1918.

WILLIAM P. BUCKLEY,
Commissioner of Deeds, The City of New York.

Certificate filed in Queens County #2969.

225 *Preliminary Report of the Receivers Filed December 7, 1917.*

Report of Manhattan and Queens Traction Corporation of Long Island City, New York, to Close of Business November 15th, 1917.

F. H. Adler, Auditor.

Filed December 7th, 1917.

Condensed Balance Sheet.

Assets.	Items.	Liabilities.
$2,059,924.87	Capital	$520,000.00
4,308.69	Current	1,676,189.82
7,408.40	Temporary	769.75
125,317.61	Deficit	
$2,196,959.57		$2,196,959.57

Detailed balance sheet and analysis given in pages following, (not printed).
Assets, not printed.
Liabilities, not printed.
Open account creditors, not printed.
Other creditors, not printed.
General information, not printed.
Lines in operation November 15, 1917, not printed.
Total miles of single track own lines, 18.04 miles.

226 Rolling Stock November 15th, 1917.

7 Cincinnati double truck centre entrance steel P. A. Y. E.
25 St. Louis double truck centre entrance steel body P. A. Y. E.
6 Jones Bros. single truck End entrance Wooden pay within
7 Laclede single truck End entrance Wooden pay within
2 Laclede single truck flat cars
2 Laclede single truck sand cars
1 Smith Wallace single truck sweeper
1 Brill single truck sweeper
1 Wason double truck plow
1 Brill double truck Tank sprinkler.

Special Traffic agreements and arrangements in effect Nov. 15, 1917 (not printed).
Other agreements for operation (not printed).
Leaseholds and rentals (not printed).
Insurance carried (not printed).
Creditors who advertise in our cars (not printed).

227 *Decree or Final Order, as Resettled and Re-entered and Filed on August* 24, 1918.

At a Special Term of the United States District Court for the Eastern District of New York, Held at the Court House in the Post Office Building, in the Borough of Brooklyn, New York, on the 24th Day of August, 1918.

Present: Hon. Thomas I. Chatfield, District Judge.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR C. Hume, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

On reading and filing the notice of motion for resettlement, dated July 29, 1918, the affidavit of Vincent Victory, verified the 29th day of July, 1918, and proof of service thereof, in favor of such resettlement, and the memorandum of Frueauff, Robinson & Sloan, Esqs., attorneys for the receivers in opposition thereto, and due deliberation having been had,

228 Now, on motion of William P. Burr, Corporation Counsel and Solicitor for defendant, it is

Ordered, that the order heretofore made herein dated the 15th day of June, 1918, and entered in the office of the Clerk of the United States District Court for the Eastern District of New York be and the same hereby is resettled to read as follows:

At a Stated Term of the United States District Court for the Eastern District of New York, Held at the Court House, in the Post Office Building, in the Borough of Brooklyn, New York, on June 15, 1918.

Present: Hon. Thomas I. Chatfield, U. S. D. J.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR C. Hume, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

The petitioners herein, William R. Begg and Arthur C. Hume, having been duly appointed, in the above entitled action, the
229 receivers of the Manhattan and Queens Traction Corporation, the above named defendant, by order of this Court, dated, filed and entered herein on the 15th day of November, 1917, and thereafter having been continued as permanent receivers of the said defendant by order of this Court, dated, filed and entered herein on the 26th day of December, 1917, and on the 6th day of March, 1918, the main cause herein having been marked for decree in favor of the plaintiff, and the said receivers having been made permanent, and said receivers having duly petitioned this Court by petition dated December 19th, 1917, for a restraining order and an injunction herein against The City of New York and the Board of Estimate and Apportionment of the City of New York, and a temporary restraining order having been signed and issued by this Court, dated December 19, 1917, wherein it was further ordered that The City of New York serve on the receivers and file in this Court an answer to said petition on or before the 24th day of December, 1917, and show cause before this Court, at a Stated Term thereof, to be held in the Post Office Building, in the County of Kings, on the 26th day of December, 1917, why said restraining order and injunction should not be made permanent, and The City of New York, having filed an answer herein to the said petition on the 21st day of March, 1918, and your petitioners having filed a reply to the said answer on March 27th, 1918, and the City having filed an additional affidavit on March 27th, 1918, and your petitioners having filed an answering affidavit on April 15th, 1918, and the City having filed an affidavit in re-
230 buttal, verified May 3d, 1918, and The City of New York having filed on Mar. 21st, 1918, preliminary objections to the hearing of this motion on the merits thereof, and argument in support of your petitioners' motion for a permanent injunction having been had before this Court on the 20th and 27th days of March, 1918,

and Robert S. Sloan, of Frueauff, Robinson & Sloan, attorneys for said receivers and your petitioners, appearing in support of the said motion for a permanent injunction against The City of New York and its Board of Estimate and Apportionment, and William P. Burr, Corporation Counsel of The City of New York, represented by Deputy Assistant Corporation Counsel Vincent Victory, appearing in opposition to the said motion for The City of New York and the Board of Estimate and Apportionment of the City of New York, and briefs having been submitted to this Court by both counsel, and after due deliberation,

Now, on reading the preliminary objections to the hearing of the motion herein on the merits dated March 18, 1918, and filed herein March 21st, 1918, the restraining order and order to show cause, dated, filed and entered herein December 19th, 1917, the preliminary report of the receivers herein, dated and filed in this Court December 7th, 1917, the petition of the said receivers, dated, filed and entered herein December 19th, 1917, and the exhibits thereto attached, marked "A," "A1," "B," "C," "D," "E," "F," consisting of copies of documents 38,634, 38,635 and 38,611 of the Department of Finance of the City of New York and voucher receipt
221 dated November 1st, 1917, for $17,175.44, and "G," consisting of copies of documents 37,979 and 37,980 of the Department of Finance of the City of New York, and voucher receipt dated November 1st, 1917, for $200 and the franchise, dated October 29th, 1912, the amendment thereof, dated July 21st, 1913, and the amendment thereof dated January 21st, 1916, all annexed to said petition, the affidavits of service of the said order and petition by Robert S. Sloan and Joseph M. Sullivan, each verified the 21st day of December, 1917, and endorsed on the said petition, the reply of the receivers to the answer of the City, verfied and filed herein March 27th, 1918, and the exhibit thereto attached, marked "A," being copy of order of the Public Service Commission, dated November 19th, 1912, in case number 1,567, and the affidavit of William W. Lowe, verified March 6th, 1918, marked "B," attached to and filed with the said reply on March 27th, 1918, the affidavit of William W. Lowe, verified the 6th day of April, 1918, and filed herein on April 15th, 1918, a copy of a letter of the President of the United States to the Secretary of the Treasury, dated February 19th, 1918, copy of a letter of the Secretary of the Treasury to the President of the United States, dated February 15th, 1918, a circular, dated February 25th, 1918, annexed to said letters, and Bulletin No. 14 of American Electric Railway Association War Board, entitled "Unnecessary Improvements," dated April 2d, 1918, all filed herein on April 15th, 1918, and on the verified bill of complaint in the main cause herein, verified by the Gas and Electric Securities Company on the 15th day of November, 1917, and filed herein
222 on the 15th day of November, 1917, the verified answer of the Manhattan and Queens Traction Corporation, verified and filed herein the 15th day of November, 1917, the bond of the said receivers, approved, filed and entered herein on November 19th, 1917, the order of this Court appointing said receivers, made, filed

and entered herein November 15th, 1917, and the order of this Court continuing said receivers as permanent receivers, made, filed and entered herein on December 26th, 1917, in support of the said motion, and on reading the answer of The City of New York to the pettion herein, verified March 20th, 1918, and filed herein on the 21st day of March, 1918, and the map attached to said answer, marked exhibit "A," and entitled "Draft Damage Map In the Matter of Acquiring Title to Lambertville Avenue Extending from Sutphin Road to Merrick Road," the affidavit of Joseph L. Ashmead, verified January 29th, 1918, attached to said answer, marked exhibit "B" the map attached to said answer entitled "Plan and Profile," dated February 21st, 1916, the map attached to said answer, marked exhibit "C," exhibit "D," being copy of letter from J. F. Keany, General Solicitor for Long Island Railroad Company, to Vincent Victory, dated January 29th, 1918, and exhibit "E," being an undated and unsigned copy of form of agreement, both attached to said answer, the affidavit of Frank B. Tucker, verified the 6th day of March, 1918, attached to said answer, marked exhibit "F," a copy of instrument attached to said affidavit entitled "Nicholas S. Everett, Benjamin Carpenter and Nathaniel Ludlum to Commissioners of
Highways, Town of Jamaica," and exhibit "G," attached to
233 said answer, being a copy of letter from P. D. Honeyman, Division Plant Superintendent of the New York Telephone Company to Mr. Charles U. Powell, dated February 4th, 1918, and exhibit "H," attached to said answer, being a copy of letter from Charles A. Barton, General Sales Agent, New York and Queens Electric Light and Power Company to Charles U. Powell, dated February 14th, 1918, and blue print entitled "Map Showing a Change in the Street System Heretofore Laid Out by Altering the Grades of Ulster Avenue from Smith Street to Westchester Avenue, Westchester Avenue from Ulster Avenue to 117th Avenue, 117th Avenue from Westchester Avenue to Dearborn Avenue and Dearborn Avenue from 117th Avenue to New York City Line, in the Fourth Ward, New York, August 14th, 1915," and blue print entitled "Draft Damage Map In the Matter of Acquiring Title to Ulster Avenue Extending from Smith Street to Westchester Avenue, Westchester Avenue Extending from Ulster Avenue to 117th Avenue, 117th Avenue Extending from Westchester Avenue to Dearborn Avenue and Dearborn Avenue Extending from 117th Avenue to the City Line, in Four Sections, Section 1, Section 2, Section 3 and Section 4," all attached to said answer, the affidavit of Clifford B. Moore, verified and filed herein March 27th, 1918, and map dated March 26th, 1918, in three sections, attached thereto, the affidavit of Clifford B. Moore, verified May 3d, 1918, and filed herein May 7th, 1918, the report of J. J. Blake, Engineer of Highways, addressed to Clifford B. Moore, Consulting Engineer, and dated February 19th,
1917, filed herein as part of the City's answer, in opposition
234 to the said motion; and the City, by an order to show cause, made on the 13th day of February, 1918, having moved this Court to vacate and set aside the stay contained in the said order dated December 19, 1917, upon the papers upon which the said

order was granted, the affidavit of Vincent Victory, verified the 13th day of February, 1918, and the proposed resolution of the Board of Estimate and Apportionment of the City of New York, attached to said affidavit and the affidavit of Robert S. Sloan, verified February 13, 1918, and filed herein February 14, 1918, having been submitted in opposition to said motion, and said motion by The City of New York having been denied by the order of this court, dated, filed and entered herein February 16, 1918, and a motion to dismiss the said petition herein on the ground that this Court was without jurisdiction having been brought on by notice of motion dated March 11, 1918, and filed herein March 13, 1918, and by notice of adjournment of said motion dated March 14, 1918, and said motion having been in all respects denied by order of this Court, dated, filed and entered herein May 17, 1918; and it appearing that the following are now the successors in office of the Mayor of the City of New York and the members of the Board of Estimate and Apportionment of the City of New York, named in the order of this Court, dated December 19, 1917; John F. Hylan, Mayor of the City of New York and Chairman of the Board of Estimate and Apportionment; Charles L. Craig, Comptroller; Alfred E. Smith, President of the Board of Aldermen; Frank L. Dowling, President of the Borough of Manhattan; Edward Riegelmann, President of the Borough
235 of Brooklyn; Henry Bruckner, President of the Borough of Bronx; Maurice E. Connolly, President of the Borough of Queens; and Calvin D. Van Name, President of the Borough of Richmond;

Now, upon filing the opinion of the Court, dated May 25th, 1918, and on motion of William R. Begg and Arthur C. Hume, receivers of the Manhattan and Queens Traction Corporation and your petitioners herein, by their attorneys, Frueauff, Robinson & Sloan, it is, pending the result of the litigation in the main action

Ordered and decreed, that the motion of the receivers for a permanent injunction, brought on by the said order to show cause, dated and entered herein December 19th, 1917, be, and the same hereby is granted; without prejudice to any further or other application to this Court for the enforcement of any claim or right of the City of New York as to said matters and it is further ordered and decreed that the temporary injunction, granted December 19, 1917, be made permanent pending further order in the action.

Further ordered and decreed, that John F. Hylan, Mayor of the City of New York and Chairman of the Board of Estimate and Apportionment of the City of New York; Charles L. Craig, Comptroller; Alfred E. Smith, President of the Board of Aldermen; Frank L. Dowling, President of the Borough of Manhattan; Edward Riegelmann, President of the Borough of Brooklyn; Henry Bruckner, President of the Borough of Bronx; Maurice E. Connolly,
236 President of the Borough of Queens; Calvin D. Van Name, President of the Borough of Richmond; Engineer, Chief of the Bureau of Franchises, and John P. McCollum, Acting Chief of the Bureau of Franchises of the Board of Estimate and Apportionment; Joseph Haag, Secretary of the Board of Estimate and

Apportionment; all of the City of New York, and the Board of Estimate and Apportionment of the City of New York, as a body, and The City of New York, and the successor and/or the successors in office of all of the foregoing, and all public officials, officers, deputies, agents, employes, servants, engineers and attorneys of The City of New York, of the Board of Estimate and apportionment of the City of New York, and of the respective Boroughs of the City of New York, and all public officials, officers, deputies, agents, employes, servants, engineers and attorneys of the Borough of Queens of the City of New York, and of all of the departments of said Borough, the Bureau of Franchises, and all deputies, assistants and employees of the said Bureau of Franchises of the City of New York, and all persons, firms, associations and/or corporations which may be employed or retained by any of the foregoing for the purpose of doing any of the things hereinafter enjoined, unless after application to this Court and all persons to whom notice of this order shall or may come, be, and they hereby are, and each of them hereby is, enjoined and restrained from moving, considering, voting on, amending, adopting, or in any manner passing a resolution of any kind or in any form whatsoever, declaring forfeited, forfeiting or purporting to forfeit, impairing and/or affecting the franchise contract of the Manhattan and Queens Traction Corporation,
237 dated October 29th, 1912, and the amendments thereof, dated respectively July 21st, 1913, and January 21st, 1916, and/or the franchises, rights and privileges of the Manhattan and Queens Traction Corporation to operate a street surface electric railway upon its route in the City of New York, upon the grounds of action herein set forth and from (until further order of this Court) declaring forfeited, forfeiting or purporting to forfeit, and/or to take or otherwise interfere with the railway, equipment, property and assets of the Manhattan and Queens Traction Corporation now in the hands of the receivers of this Court, and/or declaring the same, or purporting to declare the same, in any manner or form, the property of The City of New York, and from (until further order of this Court), taking any action or step whatsoever, covered, contemplated or threatened by the notice and resolution purported to have been adopted by the said Board of Estimate and Apportionment at its meeting on October 19th, 1917, copy of which, marked "E," is annexed to the petition of the said receivers, dated December 19th, 1917/and from calling the roll of the Board of Estimate and Apportionment, on said motion,/or acting upon such a resolution in any form, and from doing (unless after application to this Court) any act or acts, thing or things, and from taking any steps whatsoever looking to, purporting to, or for the purpose of, or preliminary to a forfeiture of; the taking of or the interfering with in any manner, directly or indirectly, said franchise of the Manhattan and Queens Traction Corporation and/or its amendments, or any one of them, and
238 of the franchises, rights, property and assets of the said Traction Corporation now in the hands of the receivers of this Court, and from (unless after order of this Court) taking, declaring

forfeited or purporting to forfeit any of the property, assets or bond or bonds of the said Manhattan and Queens Traction Corporation now on deposit with the City of New York, and from (unless after order of this Court) collecting or deducting any penalty forfeiture or damages, whether liquidated fixed or otherwise from said corporation or its property and from (unless after order of this court) taking any step or steps, or doing any act or acts whatsoever, for the purpose of depriving or preventing the Manhattan and Queens Traction Corporation and the receivers of this Court from exercising the franchises of the said corporation or from controlling and operating its railway in the streets of the City of New York, and from in any manner, directly or indirectly, interfering with the receivers of this Court in their administration of the franchises, rights, assets and property of the Manhattan and Queens Traction Corporation now in their control and possession, except from taking steps to review or modify this order in the premises.

THOMAS J. CHATFIELD,
U. S. D. J.

239 *Assignment of Error.*

District Court of the United States for the Eastern District of New York.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR CARTER HUME, as Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

And now comes The City of New York and the Board of Estimate and Apportionment of The City of New York, John F. Hylan, as Mayor of The City of New York and Chairman of the Board of Estimate and Apportionment, Charles L. Craig, as Comptroller of The City of New York, Alfred E. Smith, as President of the Board of Aldermen, Frank L. Dowling, as President of the Borough of Manhattan, Edward Riegelman, as President of the Borough of Brooklyn, Henry Bruckner, as President of the Borough of The Bronx, Maurice E. Connolly, as President of the Borough of Queens and
240 Charles D. Van Name, as President of the Borough of Richmond, all as members of the Board of Estimate and Apportionment of The City of New York, defendants, et al., and make and file this their assignment of error.

I. The District Court of the United States erred in holding that it had jurisdiction to stay and enjoin the passage of the proposed resolu-

tion revoking or purporting to revoke the franchise of the Manhattan and Queens Traction Corporation mentioned in Paragraphs XXI and XXII of the petition herein for the reason that in passing or attempting to pass such a resolution the Board of Estimate and Apportionment of The City of New York would be acting in a legislative capacity and any such act of revocation would be a legislative act with which the District Court of the United States as part of the judicial branch of the Government of the United States would have no right to interfere.

II. The District Court of the United States erred in holding that it had jurisdiction to stay and enjoin the passage of the said proposed resolution of the Board of Estimate and Apportionment in the summary manner attempted in the above proceedings and any proceedings brought in and entitled in the original action in which the receivers were appointed to preserve the property of the Manhattan and Queens Traction Corporation and on the ground that such injunction could only be granted in the plenary suit commenced in equity where the facts necessary to bring the complainant or petitioner within the jurisdiction of the United States District Court appeared in the complaint.

241 III. The District Court of the United States erred in holding that the petition of the receivers herein showed the necessary jurisdictional facts permitting them to sue in the District Court of the United States, and in holding that their sole remedy was an action in equity for an injunction brought in said Court.

IV. The District Court of the United States erred in holding that it had jurisdiction to grant said injunction for the reason that the resolution mentioned in Paragraphs XXI and XXII of the petition would be ineffectual to impair the rights or franchise of the Manhattan and Queens Traction Corporation.

V. The District Court of the United States erred in holding that the words "rights herein granted" mentioned in Section 3, Paragraph 7 of the Contract of October 29, 1912, as amended by the Contract dated January 21, 1916, did not mean forfeiture of those parts of the railroad completed and in use under separable portions of the contract.

VI. The District Court of the United States erred in holding that the words "rights herein granted" mentioned in Section 3, Paragraph 7 of the Contract of October 29, 1912, as amended by the contract dated January 21, 1916, did not mean forfeiture of the whole franchise because another separable part or extension was not completed on time, and that "the contract as a whole shows that the franchises and the various portions of the road were to be treated as they might each require."

242 VII. The District Court of the United States erred in holding that the order to perform of the Board of Estimate and Apportionment of February 16, 1916, is shown to have been impossible of performance on the ground that the same was contrary to the

evidence and without evidence to support it and against the weight of evidence.

VIII. The District Court of the United States erred in holding that The City of New York is not now in a position to entirely demand fulfillment by the Manhattan and Queens Traction Corporation of said order of the Board of Estimate and Apportionment of February 16, 1916, on the ground that the same is without evidence to support it against the weight of evidence and contrary to evidence.

IX. The District Court of the United States erred in holding that The City of New York is not now in a position where it can insist that the road must at its peril perform literally all the parts of the agreement of October 12, 1912, as amended, on the ground that the same is without evidence to support it against the weight of evidence and contrary to the evidence.

X. The District Court of the United States erred in holding that only that part of the franchise contract, between the junction of Sutphin Road and Lambertville Avenue and Springfield Road could be forfeited or terminated, but that such forfeiture or termination would have to be without infliction of the penalties provided by the other parts of the contract.

XI. The District Court of the United States erred in holding that it had power to prevent The City of New York from enforcing the terms and conditions of the said contract of October 29, 1912, as amended.

XII. The District Court of the United States erred in holding that The City of New York could not enforce the terms and conditions of the contract of October 29, 1912, as amended according to its provisions and without permission from the District Court of the United States.

XIII. The District Court of the United States erred in holding that the receivers had accepted the franchise contract of October 29, 1912.

XIV. The District Court of the United States erred in holding that the injunction was not asked for against the legislative power of the State but against threatened action of the City in taking the property "as to which the resolution of the Board of Estimate would be a step in the acquisition of that property."

XV. The District Court of the United States erred in holding that it had jurisdiction to make the injunction order herein.

XVI. The District Court of the United States erred in refusing to hold that the contractual obligations of the Manhattan and Queens Traction Corporation were not affected by the appointment of receivers and such appointment did not modify said franchise contract or affect in any way its forfeiture provisions.

XVII. The District Court of the United States erred in re-
244 fusing to hold that all that the receivers of the corporation had at the date of the granting of the injunction order and the hearing of the motion for an injunction herein was an option to take over and accept said franchise contract of October 20, 1912.

XVIII. The District Court of the United States erred in refusing to hold that the Manhattan and Queens Traction Corporation was obliged to comply with the terms of said franchise contract of October 29, 1912, and all State laws and municipal ordinances applicable to said corporation.

XIX. The District Court of the United States erred in refusing to hold that the revocation of said contract of October 29, 1912, according to the terms by the proposed resolution of the Board would not interfere with the title possession or control of the receivers of the property of the Manhattan and Queens Traction Corporation, and that said receivers took said franchise contract subject to the rights of reentry of The City of New York for condition or conditions broken.

XX. The District Court of the United States erred in refusing to hold that the passage of the proposed resolution of the Board of Estimate and Apportionment forfeiting said franchise under the provisions of "Section 5, Paragraph Thirteen" would be in its nature legislative and with this proposed action of the Board the judiciary cannot under the constitution interfere.

XXI. The District Court of the United States erred in re-
245 fusing to deny the application of the Receivers of the Manhattan and Queens Traction Corporation to enjoin the Board of Estimate and Apportionment from passing the said proposed resolution forfeiting the franchise of the property of the Manhattan and Queens Traction Corporation, under said Section 5, Paragraph "Thirteen" of said contract of October 29, 1912, as amended January 26, 1918.

Dated, New York, December 5, 1918.

WILLIAM P. BURR,
Corporation Counsel.

JOHN P. O'BRIEN,
VINCENT VICTORY,
Of Counsel.

Petition and Notice of Appeal and Allowance Thereof; Directions as to Bond.

District Court of the United States for the Eastern District of New York.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR Carter Hume, as Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

The City of New York, the Board of Estimate and Apportionment of The City of New York, John F. Hylan, Mayor of The City of New York and Chairman of the Board of Estimate and Apportionment; Charles L. Craig, Comptroller, Alfred E. Smith, President of the Board of Aldermen, Frank L. Dowling, President of the Borough of Manhattan, Edward Riegelmann, President of the Borough of Brooklyn, Henry Bruckner, President of the Borough of The Bronx, Maurice E. Connolly, President of the Borough of Queens, Calvin D. Van Name, President of the Borough of Richmond, as members of the Board of Estimate and Apportionment of The City of New York, conceiving themselves aggrieved by the final order or decree dated June 15, 1918, and filed and entered herein on the 15th day of June, 1918, and resettled on the 24th day of August, 1918, in above entitled proceeding, doth hereby appeal from said final order or decree of June 15, 1918, and resettled on August 24th, 1918, to the Circuit Court of Appeals of the United States for the Second Circuit, and they pray that this appeal may be allowed and that a transcript from the record of the proceedings and papers upon which said order or decree was made duly authenticated, may be sent to the Circuit Court of Appeals of the United States for the Second Circuit.

WILLIAM P. BURR,
Corporation Counsel, Municipal Building,
Borough of Manhattan, City of New York.

Dated, New York, December 5, 1918.

And now, to wit: on December 5th, 1918, it is ordered that the appeal be allowed as prayed for as an appeal from a final order as covered by the assignments of error upon the authority of Odell v.

Batterman, 223 Fed. 295* although the order is in form within section 129 of the Judicial Code requiring appeal within 30 days.

THOMAS I. CHATFIELD,
U. S. D. J.

248 Bond to cover cost of appeal will be dispensed with in this case.

THOMAS I. CHATFIELD,
U. S. D. J.

249 *Citation on Appeal.*

District Court of the United States for the Eastern District of New York.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR Carter Hume, as Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

UNITED STATES OF AMERICA, *ss:*

To William R. Begg and Arthur Carter Hume, as Receivers of the Manhattan and Queens Traction Corporation, Greeting:

You are hereby cited and admonished to be and appear at the Circuit Court of Appeals of the United States for the Second Circuit, to be held on the 4th day of January, 1919, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Eastern District of New York wherein The City of New York and its Board of Estimate and Apportionment and the
250 members thereof are appellants and William R. Begg and Arthur Carter Hume as Receivers of the Manhattan and Queens Traction Corporation are respondents to show cause if any there be why the final order or decree in said notice of appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witnesseth my hand and seal of the District Court of the United States for the Eastern District of New York this 5th day of December, in the year of Our Lord one thousand nine hundred and eighteen.

THOMAS I. CHATFIELD,
Judge of the District Court of the United States for the Eastern District of New York.

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*In Odell v. Batterman the appeal was taken in 5 days but that does not seem to have been brought in question on the appeal and the decree or order was considered as if within the 6 mos. statute. T. I. C.,
U. S. D. J.

251 *Opinion of Chatfield, J.*

United States District Court, Eastern District of New York.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of the RECEIVERS, for Injunction, Pending Further Order, Against the City of New York and the Board of Estimate with Relation to Resolution Declaring Franchise Forfeited.

May 25, 1918.

William P. Burr (Vincent Victory) for City of New York and Board of Estimate and Apportionment.

Frueauff, Robinson & Sloan (Robert S. Sloan) Attorneys for Receivers.

Chatfield, *J.*:

By the terms of the franchise "the right herein granted" ceased upon failure "to complete and place in operation" any of the portions of said railway by the date specified. It is impossible to hold that this meant forfeiture of the parts and equipment of the
252 railroad completed and in use under separable portions of the contract and also forfeiture of the whole franchise because another separable part or extension was not completed on time. Security was deposited to insure performance and the contract as a whole shows that the franchises and the various portions of the road were to be treated as they might each require. Further the order to perform is shown to have been impossible of performance and the City is not even now in a position to literally demand fulfillment by the railroad. While the streets and grades are so far advanced that the road and the City could, by working together, go ahead without modification of the contract yet the City is not in a position where it can insist that the road must at its peril perform literally all parts of the agreement. If forfeiture were demanded of that part of the contract which now seems to be blocked by the expiration of the time fixed by the City, there might be reason to hold that those provisions of the contract could be terminated, but this would have to be without infliction of the penalties provided by the other parts of the contract.

This Court has power to prevent interference with the property in possession of its officers and the matter is not one where protection of the receivers will deprive the City of its rights to sue or to proceed against the receivers who have only the title and property in their possession which was vested in the corporation prior to their appointment. Odell vs. Batterman, 223 Fed., 292. The injunction

is not asked against the legislative power of the State, but
253 against threatened action by the City in taking property as to which the resolution of the Board of Estimate would be a step in the acquisition of that property. Such an injunction is within the authority of the Court and the motion will be granted.

THOMAS I. CHATFIELD,
U. S. D. J.

Order Settling Record.

The foregoing record is hereby settled as the record on appeal herein to be printed by the plaintiffs-in-error, and ordered on file for use in lieu of the original for certification of a record on appeal, and the Clerk of this Court is hereby directed to certify the same as such record on appeal.

Dated, New York, March 26th, 1919.

THOMAS I. CHATFIELD,
U. S. D. J.

254 *Stipulation as to Certification of Record.*

United States District Court for the Eastern District of New York.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and *and* ARTHUR Carter Hume, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

It is hereby stipulated by the attorneys for the respective parties hereto that the foregoing printed copy is a true transcript of the record as agreed on by the parties to the above cause. This stipulation is without prejudice to the receivers' motion to dismiss the appeal herein and to their claim same was not taken in time.

Dated, New York, March 29th, 1919.

WILLIAM P. BURR,
Corporation Counsel.
FRUEAUFF, ROBINSON & SLOAN,
Attorneys for the Receiver.

Clerk's Certificate.

United States District Court, Eastern District of New York.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR Carter Hume, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

I, Percy G. B. Gilkes, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing consisting of Volumes I and II is a true copy of the transcript of the record as settled by the Court, made up to be transmitted on appeal to the United States Circuit Court of Appeals for the Second Circuit, in the above-entitled suit wherein The City of New York is the appellant and William R. Begg and Arthur Carter Hume as Receivers of the Manhattan and Queens Traction Corporation are appellees.

In witness whereof, I have hereunto set my hand and the seal of this Court the 29th day of March, 1919.

PERCY G. B. GILKES,
Clerk.

256 United States Circuit Court of Appeals, for the Second Circuit, October Term, 1919.

No. 30.

Argued December 11, 1919. Decided February 24, 1920.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of The Petition of WILLIAM R. BEGG and ARTHUR Carter Hume, Receivers of Defendant, Appellees, Relative to the Franchise and Property of the Defendant, The City of New York, Appellant.

Appeal from the District Court of the United States for the Eastern District of New York.

Before Rogers, Hough and Manton, Circuit Judges.

Frueauff, Robinson & Sloan, Solicitors for the Receivers-Appellees.

257 Robert S. Sloan, of Counsel.
William P. Burr, Corporation Counsel.
Vincent Victory, of Counsel.

This cause comes here from the United States District Court for the Eastern District of New York, on order granting and continuing an injunction. The order was originally dated and entered on June 15, 1918, and was re-settled and re-entered on August 24, 1918.

The order from which the appeal is taken grants and continues an injunction until further order of the court against The City of New York, its Board of Estimate and Apportionment and all public officials, employees and servants of the City of New York, from passing a proposed resolution forfeiting or affecting the franchise of the Manhattan & Queens Traction Corporation dated October 29, 1912, and from taking all of the property of said corporation, then in the hands of Receivers appointed by the United States District Court for the Eastern District of New York, without compensation and without proceedings at law or in equity, or from in any way interfering with that company.

The above order was issued to enjoin The City of New York from passing a resolution forfeiting the franchise and railway of the defendant corporation on the ground that the corporation had not complied with the terms of the franchise contract and completed its line of road within the period prescribed.

The facts more fully appear in the opinion.

ROGERS, Circuit Judge (after stating the above facts):

It appears that The City of New York had entered into a franchise contract with the Manhattan and Queens Traction Corporation under date of October 29, 1912, which franchise contract was amended on July 21, 1913, and on January 21, 1916. In reliance upon this contract the Manhattan and Queens Traction Corporation constructed, equipped and put in operation a double track
258 street surface electric railway between the Long Island plaza of the Queensboro Bridge at Jackson Avenue, upon and along Thomson Avenue and other streets and avenues in the Borough of Queens to the intersection of Sutphin Road and Lambertville Avenue, a distance of over ten miles. The contract required that this part of the railway should be completed and in operation on or before May 1, 1916. The contract in this respect was complied with and the railway has been in continuous operation for this distance of ten miles from April 26, 1916. Then as to the remainder of the line the contract under the amendment of January 21, 1916, provided that it was to be completed "within such time or times as may be directed by resolution of the Board (of Estimate and Apportionment) upon recommendation of the President of the Borough, provided that title to the streets involved has been vested in The City and that said streets have been regulated and graded." At a meeting of the Board of Estimate and Apportionment held on February 16, 1917, the President of the Borough of Queens offered and there was adopted a resolution which directed the Manhattan and Queens Traction Corporation to commence construction of the remaining portion of its street surface railway from the intersection of Sutphin Road and Lambertville Avenue to the intersection of Central Avenue and Springfield Road within 30 days, and to complete and put the same in operation within six months from the date of the approval of the resolution by the mayor. The resolution was approved by the mayor on February 23, 1917. Under the terms of the resolution therefore it was incumbent on the corporation to complete and put in operation, the remaining portion of the line therein mentioned, and which comprised only 3.3 miles, on or before August 23, 1917.

That the line of railway was not completed in accordance with the resolution is conceded, and the explanation which is made for the failure to comply with it is that the resolution was void as The City of New York was not in a position to insist that the
259 Traction Corporation should make the extension, owing to the fact that title to the streets involved in the extension was not at the time vested in the City, and all of the streets were not regulated and graded to their legal grade and full width as was required by a condition precedent in the franchise contract. Whether these claims are well founded will be later considered.

That the City did not think that there was legal excuse for the failure to complete the road within the period specified is apparent. For on October 19, 1917, the Board of Estimate and Apportionment

passed a resolution directing the Traction Corporation to show cause on November 9, 1917, why a resolution declaring forfeited the contract dated October 29th, 1912, and its amendments, should not be adopted, and why said resolution should not provide that the railway constructed and in use by virtue of said contracts shall thereupon become the property of The City of New York without proceedings at law or in equity.

On October 19, 1917, the Division of Franchises of the Board of Estimate and Apportionment prepared a form of proposed resolution of forfeiture to be submitted to the Board, which appears in the margin.[1]

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[1] "Whereas, Pursuant to a resolution of the Board of Estimate and Apportionment adopted July 15, 1912, and approved by the Mayor July 16, 1912 a contract, dated October 29, 1912, was entered into between The City of New York and the South Shore Traction Company, for the construction, maintenance and operation of a street surface railway upon and over the Queensboro Bridge and upon and along various streets and avenues in the Borough of Queens, between said bridge and the Nassau County line, as is more fully set forth and described in Section 2 of said contract; and

Whereas, By resolution adopted by the Board of Estimate and Apportionment November 21, 1912, and approved by the Mayor November 22, 1912, said Board granted consent to the South Shore Traction Company to assign, transfer and set over all rights and privileges granted by said contract of October 29, 1912, so that the same should pass to and vest in the Manhattan and Queens Traction Corporation; and

Whereas, Such assignment of said rights and privileges was subsequently made and said Manhattan and Queens Traction Corporation took possession of the property of said South Shore Traction Company and took over the operation of the local service maintained on the Queensboro Bridge by said South Shore Traction Company, at midnight on December 27, 1912; and

Whereas, Pursuant to a resolution of the Board of Estimate and Apportionment adopted July 3, 1913, and approved by the Mayor on the same day, said contract of October 29, 1912, was modified and amended by a contract dated July 21, 1913, entered into between The City of New York and said Manhattan and Queens Traction Corporation; and

Whereas, Pursuant to a resolution of the Board of Estimate and Apportionment adopted December 17, 1915, and approved by the Mayor December 18, 1915, said contract of October 29, 1912, as amended by said contract of July 21, 1913, was further modified and amended by contract dated January 21, 1916, entered into between The City of New York and the said Manhattan and Queens Traction Corporation; and

Whereas, Section 3, Seventh, of said contract of October 29, 1912, as amended by said contract, of January 21, provides as follows:

'Seventh. The Company shall complete and put in operation terminal of Queensboro Bridge to the intersection of the tracks of the Long Island Railroad with Thomas Avenue at or near Greenpoint Avenue on or before February 13, 1913, from the intersection of the tracks of the Long Island Railroad Company with Thomson Avenue to the intersection of Thomson Avenue and Broadway on or before April 30, 1913, from the intersection of Thomson Avenue and Broadway to the proposed new Long Island Railroad station in the former Village of Jamaica, on or before January 31, 1914.

The Company shall complete and put in operation that portion of its railway herein authorized between the present terminus thereof at the Long Island Railroad Company's station at Jamacia, and the intersection of Sutphin Road (Guilford Street) and Lambertville Avenue (Pacific Street), on or before May 1, 1916, and the remainder of its said railway between said intersection of Sutphin Road (Guilford Street) and Lambertville Avenue (Pacific Street) and the City Line at Central Avenue within such time or times as may be directed by resolution of the Board upon recommendation of the President of the Bor-

260 This resolution was to come up for action at a meeting of the Board on December 21st, 1917.

The Receivers of the defendant corporation being of the opinion that this threatened action of the City was contrary to the franchise contract as amended and that it was illegal, unjust and inequitable petitioned the court below which was the court that had ap-
261 pointed them, for a temporary restraining order which was granted. Thereafter they obtained the order appealed from restraining the passage of the resolution above set forth.

Before considering this case on the merits it is necessary to determine a preliminary question as to whether the appeal was
262 taken within the time prescribed by the Judicial Code. It is elementary that at common law a writ of error lies only from final judgments, and that the remedy by appeal is unknown to the common law being employed for the review of causes in equity. According to the practice in equity as administered in England appeals lay from interlocutory as well as from final orders or de-
263 crees. But under the judicial system of the government of the United States from the beginning until the passage in 1891 of the Act establishing the Circuit Court of Appeals an appeal would lie only from final judgments or decrees. Smith v. Vulcan Iron

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ough, provided that title to the streets involved has been vested in the City and that said streets have been regulated and graded.

Upon the failure of the Company to complete the construction and place in operation any of the said portions of the railway on or before the date or time herein specified, the right herein granted shall cease and determine, and all sums or securities paid to the City, or deposited with the Comptroller as security for performance by the Company of the terms and conditions of this contract, as herein provided, shall be forfeited to the City without action by the City, provided, however, that the Board may extend the time within which to complete the construction and place the railway in operation as it may deem just and equitable.'

Whereas, By resolution adopted by said Board of Estimate and Apportionment February 16, 1917, and approved by the Mayor February 23, 1917, said Manhattan and Queens Traction Corporation was directed to commence construction of that portion of its street surface railway authorized by said contract of October 29, 1912, as amended by said contract of July 21, 1913, from the intersection of Sutphin Road and Lambertville Avenue to the intersection of Central Avenue and Springfield Road, on or before March 23, 1917, and to complete and put in operation said portion of its street surface railway on or before August 23, 1917; and

Whereas, Said Manhattan and Queens Traction Corporation has failed or neglected to complete construction of and put in operation that portion of its street surface railway authorized by said contract of October 29, 1912, as amended by said contract of July 21, 1913, from the intersection of Sutphin Road and Lambertville Avenue to the intersection of Central Avenue and Springfield Road, on or before August 23, 1917; and

Whereas, Section 5, Thirteenth, of said contract of October 29, 1912, provides as follows:

Thirteenth. In case of any violation or breach *of* failure to comply with any of the provisions herein contained, this contract may be forfeited by a suit brought by the Corporation Counsel on notice of ten (10) days to the Company, or at option of the Board by resolution of said Board, which said resolution may contain a provision to the effect that the railway constructed and in use by virtue of this contract shall thereupon become the property of the City without proceedings at law or in equity. Provided, however, that such action by the Board shall not be taken until the Board shall give notice

Works, 165 U. S. 518, 522. The Act of 1891 c. 517, sec. 7 provided that where upon a hearing in equity an injunction shall be granted, continued, refused or dissolved by an interlocutory order or
264 decree, or an application to dissolve an injunction shall be refused, an appeal may be taken from such interlocutory order or decree to the Circuit Court of Appeals. In 1900 the Act of 1891 was amended so that an appeal might also be taken from an interlocutory order appointing a receiver. Act of 1900 ch. 803. With these exceptions the appellate jurisdiction of this court continues restricted to final orders or decrees.

It is said in this case that the appeal was not taken in time and the receivers on that ground have moved to dismiss. The
265. order granting and continuing the injunction was re-entered and re-settled on August 24th, 1918. The appeal therefrom was taken on December 5th, 1918. The contention is that the order is an interlocutory one, and that as appeals from interlocutory orders are required by Section 129 of the Judicial Code to be taken within 30 days from the entry of such order, the appeal was
266 not in time. U. S. Compiled Statutes Ann. (1916) vol. 2, p. 1444, sec. 1121. If the order is a final one it is admitted that the appeal was taken in time as such appeals may be taken at any

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to the Company to appear before it on a certain day, not less than ten (10) days after the date of such notice, to show cause why such resolution declaring the contract forfeited should not be adopted. In case the Company fails to appear, action may be taken by the Board forthwith.

Whereas, At a meeting of this Board held October 19, 1917, the following resolutions were adopted:

'Resolved, That the Manhattan and Queens Traction Corporation be and it is hereby notified, under and pursuant to Section 5, Thirteenth, of the contract dated October 29, 1912, by and between The City of New York and the South Shore Traction Company which said contract was, with the consent of the Board of Estimate and Apportionment given by resolution adopted November 21, 1912, and approved by the Mayor November 22, 1912, assigned to the Manhattan and Queens Traction Corporation, to appear before the Board of Estimate and Apportionment on November 9, 1917, at a meeting of said Board to be held on said date, at 1:30 o'clock A. M., in Room 16 City Hall, Borough of Manhattan, and show cause why a resolution declaring forfeited the contract dated October 29, 1912, granting a franchise to the South Shore Traction Company and subsequently assigned to the Manhattan and Queens Traction Corporation, and the contracts dated July 21, 1913, and January 21, 1916, by and between The City of New York and the Manhattan and Queens Traction Corporation, amending said contract dated October 29, 1912, should not be adopted, and why such resolution shall not provide that the railway constructed and in use by virtue of said contracts shall thereupon become the property of The City of New York without proceedings at law or in equity; and be it further

Resolved, That the Secretary of this Board be and he hereby is directed to forward to the Manhattan and Queens Traction Corporation copies of these resolutions and notify said corporation, in writing, that on the aforementioned date, at said time and place, said Corporation mentioned will be allowed a hearing before final action is taken,' and

Whereas, On October 19, 1917, a copy of the aforesaid resolution was forwarded to said Manhattan and Queens Traction Company and said corporation notified, in writing, that it would be allowed a hearing on November 9, 1917, before final action is taken; and

Whereas, Such hearing was held on November 9, 1917, upon request of the Acting President of the Borough of Queens was continued to November 16,

time within 6 months after the entry of the order. 26 Stat. at Large, p. 829. Barnes Fed. Code, 1919, sec. 1386. U. S. Compiled Statutes (1916) Ann. vol. 3, p. 3266 sec. 1647.

An interlocutory order is one entered between commencement and the end of a suit or action which denies some point or matter but which is not a final decision of the matter in issue. Bouvier's Law Dictionary. An interlocutory injunction is one granted prior to the final hearing and determination of the matter in issue, and which is to continue until answer, or until the final hearing, or until the further order of the court. Its object is to maintain the status quo, to maintain the property in its existing condition and prevent further or impending injury and not to determine the rights of the parties. In re Sharp, 87 Kans. 504; Nelson v. Brown, 59 Vermont 600. In Klein v. Independent Brewing Association, 231 Ill. 594, it is said that a final decree is not necessarily the last order in the case as orders sometimes follow merely for the purpose of carrying out or executing the matters which the decree has determined, but when it finally fixes the rights of the parties it is final and may be reviewed. In Collier v. Seward, 113 Va. 228, a decree is said to be interlocutory and not final if the further action of the court in the cause, as distinguished from proceedings necessary to execute the decree is necessary to give completely the relief contemplated by the court

267 A preliminary injunction was issued on December 19, 1917, and the City was directed to show cause on December 26, 1917,

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1917, when it was continued to December 21, 1917, when it was continued to January 18, 1918, when it was again continued and was concluded after hearing Robert S. Sloan, Counsel to the Corporation, and

Whereas, In the opinion of the Board of Estimate and Apportionment, the Corporation has failed to comply with the provisions of said contract of October 29, 1912, as amended by said contracts of July 21, 1913, and January 21, 1916, the violation or breach of which provisions renders the said contracts liable to forfeiture; and

Whereas, Due deliberation having been had, the Board of Estimate and Apportionment hereby determines that the Manhattan and Queens Traction Corporation has broken and failed and neglected to comply with the provisions of the contract dated October 29, 1912, as amended July 21, 1913, and the contract dated January 21, 1916, and said consents, franchises and contracts should be forfeited to The City of New York on account of such violation, breach and default, and the railway constructed and in use under and by virtue of said contracts shall thereupon become the property of The City of New York; now, therefore, be it

Resolved, That the Board of Estimate and Apportionment, under and pursuant to the provisions of Section 5, Thirteenth, of the said contract dated October 29, 1912, herein and hereby declares forfeited to The City of New York the contract dated October 29, 1912, between The City of New York and the Manhattan and Queens Traction Corporation, granting a franchise to the said Corporation, and the contracts dated respectively July 21, 1913, and January 21, 1916, modifying and amending said contract dated October 29, 1912; and be it further

Resolved, That the railway constructed and in use by virtue of said contracts dated October 29, 1912, July 21, 1913, and January 21, 1916, shall, from and after this date, become the property of The City of New York without proceedings at law or in equity; and be it further

Resolved, That the Secretary of this Board be and he is hereby directed to forward a copy of these resolutions to the Manhattan and Queens Traction Corporation."

why the temporary injunction should not be made permanent. After a full hearing on the merits the order as resettled and entered on August 24, 1918, reads as follows:

"Ordered and decreed, that the motion of the receivers for a permanent injunction, brought on by the said order to show cause, dated and entered herein December 19th, 1917, be, and the same hereby is granted; without prejudice to any further or other application to this Court for the enforcement of any claim or right of the City of New York as to said matters and it is further ordered and decreed that the temporary injunction, granted December 19, 1917, be made permanent pending further order in the action."

The order enjoined the persons specified therein "from moving, considering, voting on, amending, adopting, or in any manner passing" the resolution heretofore referred to. The fact that the order was without prejudice to any further application to the court for the enforcement of any of the rights of the City certainly cannot have the effect of converting what is otherwise a final order into an interlocutory one. The injunction meant the end of the matter so far as the particular judge who issued it was concerned, except that it did not include a change of mind on his part. The order goes just as far and lasts just as long as the District Court is possessed of any authority to issue it, and is therefore "final," and therefore appealable within the six months period. It is clearly a final order within the rule laid down by this court in Odell v. H. Batterman Co., 223 Fed. 292, 295. In that case the court below entered an order which denied a request to be permitted to sue the receivers in ejectment. This court held the order was a final order from which an appeal could be taken. We said:

"Under the decisions an adjudication is a final appealable order if it involves a determination of a substantial right against a
268 party in such a manner as leaves him no adequate relief except by recourse to an appeal. In the suit at bar appellant claims a legal right to immediate possession of the premises, and asserts that he is entitled to have that right determined with all reasonable speed. So much of the order appealed from as denied appellant's application was undoubtedly a final order, inasmuch as it definitely and conclusively determined the proceedings which appellant had instituted. The effect of the order as we have pointed out is to leave appellant without relief until the receivership is terminated. When that will be, cannot be predicted. The receivership is a consent receivership and capable of indefinite duration."

We adhere to what was said in the above case and think it decisive of this on the particular matter now under discussion.

There remains to be considered before passing to the merits, the question whether the receiver followed the proper procedure in bringing the matter before the court by a petition in the suit in which they were appointed although the party against whom the petition is filed

is not a party in the original action. And this question we think must be answered in the affirmative. The receivers were appointed in a judgment creditors' suit in equity brought in the United States District Court for the Eastern District of New York by the Gas and Electric Securities Company, a Delaware Corporation, against the Manhattan and Queens Traction Company. The receivers entered on their duties on November 15, 1917, and found The City of New York threatening to take action on December 21, 1917, for the forfeiture of the franchise and the property of the Company, over which they were appointed receivers. To protect the property in their hands the receivers applied for injunctive relief by petition in the receivership action. The City claims that this was error, and
269 that the receivers should have proceeded by plenary suit or by ancillary bill, and not in a summary manner on petition and rule made in the receivership action. The city relies on what is said in Blair v. The City of Chicago, 201 U. S. 400, 449, 450, where the right to proceed in such a case by ancillary bill is asserted. The court did not however decide that an ancillary bill was the only way in which the receivers could proceed in such cases. In a case in the Circuit Court of Appeals for the Sixth Circuit, City of Shelbyville, Ky., v. Glover, 184 Fed. 234, the receiver in a case like the present proceeded by petition in the suit in which he was appointed although the proposed defendant was not a party to such suit. It was held that this is not an improper way to proceed when the rights of the proposed defendant can be as fully protected in such proceeding as in a separate suit, which is a matter to be determined by the court in the exercise of its discretion. We are disposed to take the same view of the matter, at least in a case where the substance of the petition sets forth a matter which is really ancillary to the main action, so that an ancillary bill could have been filed. And that an ancillary bill might have been filed in this case we think is clear. See Pell v. McCabe, 256 Fed. 512, 515, where the purposes for which an ancillary suit may be maintained are stated. And see Hume v. City of New York, 255 Fed. 488.

The petition being properly before the court we are brought to inquire whether the court had power to restrain the Board of Estimate and Apportionment from proceeding to declare the forfeiture. The Franchise contract dated October 29, 1912, provided in Section 5 that the grant to the company to construct, maintain and operate its railway over the line therein defined "was subject to the following conditions, which shall be complied with by the Company." Then followed the conditions and among them was a provision that on failure to comply with any of the provisions of the contract the contract might be forfeited by a suit brought by the Corporation Counsel,
or at option of the Board by resolution of said Board. The
270 insertion of such a provision in the contract was required by the Charter of the City which contains the following:

"Every grant shall make adequate provision by way of forfeiture of the grant or otherwise to secure efficiency of public service at reasonable rates * * *."— Greater New York Charter, Chapter

378, of the Laws of 1897, as amended by Chapter 466 of the Laws of 1901 and 629 of the Laws of 1905, Section 73."

The power of a municipal corporation to grant a conditional consent to a railroad in its streets is not open to controversy in the State of New York. Matter of Quimby v. Public Service Commission, Second District, 223 N. Y. 244, 259. The condition if it touches the future operation of the road has the force of a condition subsequent and if its terms are not fulfilled the consent may be revoked, Matter of International Railway v. Public Service Commission, Second District, 226 N. Y. 474. What the City of New York was proposing to do was to revoke its consent, on the ground that the terms of the contract had not been complied with.

The exercise of the power to grant and to revoke had been transferred by law from the Board of Aldermen or Common Council of the city to the Board of Estimate and Apportionment by an amendment to the charter of the City. Laws of New York, 1905, vol. 2, Chapt. 629, p. 1535. And in Wilcox v. McClellan, 185 N. Y. 9, 17, it is said: "If in the judgment of the legislature the Board of Estimate and Apportionment was the proper body to entrust with the granting of franchises, we are unable to see wherein any right of the Board of Aldermen or of any other officer or individual has been unduly invaded." Under the legislation referred to the control of the streets, and the power of granting and repealing franchises of street railways has been transferred to the Board of Estimate
271 and Apportionment and in the exercise of that power the City claims that the Board is in the exercise of legislative power. Prior to this legislation, and from the date of the Dongan Charter, the Common Council or Board of Aldermen had exercised the legislative power of The City of New York. Ghee v. Northern Union Gas Company 158 N. Y. 510, 512, 516. By legislative power is meant the authority exercised by that department of government which is charged with the enactment of laws as distinguished from the executive and judicial functions. And the right of municipal corporations to exercise the legislative function under authority conferred by the legislature cannot be challenged.

In granting a franchise to occupy the streets the Board is acting in a purely government capacity. It certainly cannot be said to be acting in any private or proprietary capacity. In passing the resolution declaring the grant at an end it equally acts in a governmental capacity, as the agent of the State, and for the promotion of the public good, Edson v. Olathe 81 Kans. 328, 331.

The general rule is that a court of equity will not issue an injunction to restrain a municipal corporation from the exercise of legislative or governmental power even though the contempated action may be in disregard of constitutional restraints and may impair the obligation of a contract. New Orleans Water Works Co. v. New Orleans; 164 U. S. 471. Dillon's Municipal Corporations 5th ed. vol. 2, sec. 582; McQuillin's Municipal Corporations, vol. 5, sec. 2503, and vol 1, sec. 705.

In High on Injunctions 4th ed. vol. 2, sec. 1243, p. 1250 the rule is correctly stated when it is said to be "unquestionably true that

purely legislative acts, such as the passage of resolutions, or the adoption of ordinances by a municipal body, even though alleged to be unconstitutional and void, will not be enjoined, since it is not the province of a court of equity to interfere with the proceedings of municipal bodies in matters resting within their jurisdiction, or to control in any manner the exercise of their discretion. * * *
272 And while courts of equity will not enjoin municipal bodies from the passage of ordinances or resolutions the courts may and will, on a proper case being shown, prevent their enforcement, and for this purpose may enjoin proceedings thereunder which would otherwise result in irreparable injury."

The subject is considered at some length in 5 Pomeroy's Equity Jurisprudence secs. 339, 340, the conclusion reached being in accord with what has been above stated, and it is added that the doctrine is alike applicable to resolutions and ordinances.

The opinion of Judge Magruder in Stevens v. St. Mary's Training School 144 Ill. 336 makes a most thorough examination of the question and reviews the decided cases, and reaches the same conclusion.

The court below in granting the injunction said: "The injunction is not asked against the legislative power of the State, but against threatened action by the City in taking property as to which the resolution of the Board of Estimate would be a step in the acquisition of that property. Such an injunction is within the authority of the court and the motion will be granted." If this statement means that a distinction exists between the right to enjoin the legslative power of the State and that of a municipal corporation, we know of no authority for making the distinction. If it means that the passage of the contemplated resolution does not involve an exercise of legislative power, being a resolution instead of an ordinance, we are unable to agree in that conclusion. A city's legislative power can be exercised by either an ordinance or by a resolution except as its charter or the general law otherwise provides. Bouvier defines "resolution" as: "An agreement to a law or other thing adopted by a legislature or popular assembly." And our attention has not been called to any provision in the Charter of The City of New York which requires the Board of Estimate and Apportionment to act otherwise than by resolution in such a matter as the one under consideration.

Counsel for the receivers say in their brief that "The Act of the Board of Estimate and Apportionment in granting a fran-
273 chise to a private corporation is not a legislative act, a fortiori, the revocation of a franchise contract, for a claimed failure to comply with certain of its terms, is not a legislative act." The granting of a franchise is not a judicial, and under our system, not an executive act. If it is not legislative we do not know how its action is to be classified. It is certainly acting in a governmental capacity. To say that a State or a city does not legislate when it grants a franchise because acceptance by the incorporators is necessary is a proposition we are not prepared to adopt.

We are aware that there are cases which tend to support the doctrine that the forfeiture of a franchise is a judicial question to be adjudicated in a direct proceeding brought by the State through its

attorney-general. There is also a strong line of decisions to the contrary. Under ordinary circumstances due process of law implies a formal judicial proceeding but such a proceeding is not invariably required. See Held v. Crosthwaite 260 Fed. 613, 618, 625. In the case now before the court the franchise contract expressly provided that if the company did not complete the construction and place in operation the railway on or before the dates specified "the right herein granted shall cease and determine." We are satisfied that the Company did not comply with its contract. It did not construct and put in operation its railway within the time allowed it for the purpose, and because it did not do so its franchise automatically ceased and determined. The reasons put forward for not having complied with the contract in the affidavits presented to the court afford no excuse for the failure to perform. The parties to a contract are bound to perform it according to its terms, unless performance is rendered impossible by the act of God, by the law, or by the other party. Performance is not excused by unforeseen difficulties or because it has become unexpectedly burdensome. That times were hard, that the Company was in financial difficulties, that labor and materials had excessively advanced, and that it was impossible in a business
274 sense to go ahead with the work may all have been reasons which might have been addressed to the City in an appeal to have the time for the completion of the contract extended, but they afforded no legal excuse for the failure to perform.

The resolution which the Board is enjoined from passing proposed two distinct things: a declaration of the forfeiture of the franchise; and a declaration of the forfeiture of the railway constructed and in use, which "shall from and after this date become the property of the City of New York without proceedings at law or in equity." The Board as we have seen has been given the legislative power of granting a franchise, and directed by the law making body of the State to make provision "by way of forfeiture of the grant." If the franchise is the only thing the City can legislatively grant the franchise is the only thing it can legislatively forfeit. But if the terms and conditions of a grant, which the legislature has authorized the municipal body to confer, have not been determined in advance by the legislature, and in this case they had not been, the terms and conditions of the grant and of the forfeiture are to be determined by the municipal body under its delegated authority and in so doing it acts legislatively, both as respects the grant and the forfeiture. In such cases it has been held that if the company accepts the benefit of a grant it takes subject to the conditions attached thereto and is thereby estopped to contest the validity of the conditions, either as ultra vires the municipality, or as beyond its own powers. Potter v. Calumet Electric St. R. Co. 158 Fed. 52; Rutherford v. Hudson River Traction Co., 73 N. J. L. 227; People v. Suburban R. Co. 178 Ill. 594; Chicago General R. Co. v. Chicago 176 Ill. 253.

The courts hold that a corporation cannot question the constitutionality of an act under which it is incorporated. Whether upon the same principle a street railroad company is estopped in all cases to question the validity of a franchise-contract under which it oper-

ates, and the benefit of which it has received, and is estopped
275 from questioning the terms and conditions of the grant and the terms and conditions of the forfeiture we need not now determine. In this case the grant and the forfeiture grow out of the exercise of legislative power and of contractual obligation. It can make no difference that the franchise was forfeited automatically by the failure to complete the trolley line within the period prescribed, and that the forfeiture "of the railway" to the City of New York is to become effective from the date of the passage of the enjoined resolution. The forfeiture of the one is as good as the forfeiture of the other. Just what is meant by the term "railway" in the resolution of forfeiture is not before us and is not determined.

The franchise contract in making it incumbent on the Traction Company to complete the remaining portion of its line "within such time or times as may be directed by resolution of the Board," made the obligation conditional by adding, "provided that title to the streets involved has been vested in the city and that said streets have been regulated and graded." And it is said that on February 16, 1917, when the Board passed its resolution directing the Traction Company to complete and put in operation its railway within six months from the date of the approval of the resolution, the title to the streets involved had not vested in the City and the streets had not been "regulated and graded—to their legal grade and full width." The words "legal grade and full width" are not the words used in the franchise contract. The words found there are simply "regulated and graded." And our attention has not been called to any decision holding that words so used in such contracts mean "regulated and graded to their legal grade and full width." There is no discussion of the matter in the court below. The opinion however states that "the City is not even now in a position to literally demand fulfillment by the railroad. While the streets and grades are so far advanced that the road and the City could, by working together, go ahead without modification of the contract yet the City is not in a position where it can insist that the road must at
276 its peril perform literally all parts of the agreement." The record discloses that with certain exceptions, hereinafter referred to, the streets involved were graded to their full width and length. There were 7 parcels on Lambertville Avenue where the grading was not completed to the full width. But those parcels did not extend one-half way across the sidewalk of that street, and did not in a single instance touch or effect the grade of the 40 foot roadway or interfere in any way with the construction of the trolley line. That portion of Lambertville Avenue between Freehold Street and Medford Street had a temporary grade conforming to the grade of the Long Island Railroad Company's line over which the City has a prior right of way and the Long Island Road proposed to the Traction Company that it might operate its railway over a temporary trestle which might span its tracks until the Long Island Road elevated its tracks as required by the order of the Public Service Commission when Lambertville Avenue and the Traction Company's road were to run thereunder. We think, too, that it plainly appears that the

title to the streets, except the crossing of the Long Island Railroad, is in the City and as to that we have seen that there is no obstacle in the way of the construction of the trolley line by a trestle above. It appears, however, that there are perhaps 25 telephone poles which would possibly have to be moved" from the streets to be traversed, although in one of the affidavits the Consulting Engineer for the Borough of Queens states that "Between Farmers Avenue and Springfield Boulevard several poles interfere and may have to be moved but in my opinion no poles need be moved to allow the construction of this railway." And it is said that when a street is regulated and graded in the City of New York it is the custom to move back all poles to an established line about one and one-half feet inside of the established curb line, and it is estimated that the cost of the removal of the poles in this case would be approximately $675.00. It is said too that a few water hydrants would have to be moved, and that the overhanging branches of some 15 or 20 trees would have to be
277 trimmed so that they could not interfere with the wires of the trolley. We confess that these objections do not impress us. We do not find them justified by anything in the franchise contract which requires the streets to be "graded."

To grade a street, or highway, strictly speaking is to establish a level by mathematical points and lines and then to bring the surface of the street or highway to that level by the elevation or depression of the natural surface to the line as fixed. And we do not understand that the franchise contract under consideration means more than this as respects the City's duty to grade. In Smith v. Corporation of Washington, 20 How. 135, 148, Mr. Justice Grier, speaking for the court, said:

"Streets cannot be opened and kept in repair or made safe or convenient for public use, without being made level, or as nearly so as the nature of the ground will permit. Hills must be cut down and hollows filled up, or, in other words, the road must be 'graded' or 'reduced to a certain degree of ascent or descent;' which is the proper definition of the verb 'to grade.'"

In Sedgley Avenue, 217 Penn. 313 it is said that "As a matter of fact the grading of a street is its physical opening." Then, the court adds, when the city is in funds the physical grading is done and sewers and water pipes and gas pipes are laid as part of the work. And it is said in that case that when the physical opening and grading is done those holding the title are entitled to be paid "for the grading, that is, for the depositing of dirt upon the street taken as a street, or the cutting out of dirt from that strip according as the grading consisted of a 'fill' or a 'cut.'" We think the streets involved in the franchise contract were "graded," and we are not impressed by the claim that because possibly a few telephone poles needed to be moved and a few trees needed to have their branches trimmed the Traction Corporation was under no obligation to begin its work of construction. We find ourselves unable to accede to that view of the matter.

278 The Traction Corporation claims and the court below has held that section 3, paragraph seventh of the contract did not comprehend a forfeiture of the entire grant. An examination of the franchise contract and its amendments shows that the intention of the parties was that the railway was to be constructed in separate sections as the respective sections of territory to be traversed became populated and developed, and streets were established therein. Section 3 above referred to provided that upon the failure of the Company to complete the construction and place in operation "any of the said portions of the railway" on or before the dates specified, the right herein granted shall cease. The court below thought it impossible to hold that the whole franchise was lost because a separable part or extension of the road was not completed on time. We do not so understand it. The right which "shall cease" is "the right herein granted," and "the right herein granted" was the franchise, and that was a single franchise and not as many separate franchises as there were separate portions of the railway to be constructed. So Section 5 of Article 13 provides that in case of failure to comply with any of the provisions of the contract "this contract may be forfeited either by a suit or by resolution of the Board." Surely the intention is plainly indicated that the contract as a whole was to be terminated and come to an end by the failure to construct any separable portion of the line within the specified period.

The Comptroller of the City of New York on November 1, 1917, accepted payment of taxes from the Traction Corporation for the year ending September 30, 1917, while August 23, 1917, was the date on which the extension of the trolley line was to be completed. It is said that the acceptance of these franchise taxes bars the City from claiming forfeiture of the franchise contract. The answer is that the receipt of monies by the administrative officers of the City in the course of the City's business cannot have the effect of a waiver of the rights of the pub-ic or of the municipality. See Wisconsin Central R. R. Co. v. United States 164 U. S. 190.

279 In the last analysis the petition which the receivers have filed is in reality a bill in equity to be relieved against a forfeiture which the Traction Company incurred prior to their appointment. There are undoubtedly cases in which equity courts did and do relieve from forfeitures. Relief is afforded in all cases of forfeiture arising from non-payment of money, and in cases where the damage incurred is susceptible of pecuniary measurement and therefore of compensation. But it is equally well established that there are causes in which no relief from forfeiture can be granted. It is settled that where the parties have so stipulated as to make time of the essence of the contract a failure to perform at the time agreed upon cannot be relieved from. Pomeroy's Equity Jurisprudence 3rd Ed. vol. 1, sec. 455. So equity gives no relief from forfeiture growing out of breach of covenant to do some specific act. Bispham's Equity, 8th Ed. sec. 181. And a court of equity is powerless to grant relief from a forfeiture provided for by the express terms of statutory legislation. Clark v. Barnard 108 U. S. 436, 455, 456, 457. In this case time is of the essence of the contract, the thing to be done is a specific

act, and the forfeiture is imposed under and by virtue of statutory legislation by the State of New York as found in the Charter of The City of New York. A court of equity is therefore without power to grant to the petitioners relief from the forfeiture which was incurred by those whose estates they are administering.

To summarize our conclusions it may be said that the order appealed from is a final order and the appeal therefrom was well taken; that as the matter involved is ancillary to the main suit the Receivers were entitled to proceed as they did by petition: that on the facts disclosed the Receivers have not made out a case either of compliance with the contract or of legal excuse for non-compliance, or any grounds of relief from forfeiture.

The order granting the injunction is reversed, without prejudice, however, to the right of the Receivers to renew their applica-
280 tion after the adoption of the proposed resolution by the Board of Estimate and Apportionment if the Receivers then have reason to believe that The City of New York is proposing to take into its possession any of the visible and tangible property which has come into their hands as Receivers and which they are advised The City of New York is not entitled to take from their possession by virtue of the resolution aforesaid.

It is so order-d.

281 At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, Held at the Court Rooms in the Post Office Building in the City of New York, on the 4th Day of March, One Thousand Nine Hundred and Twenty.

Present:
Hon. Henry Wade Rogers,
Hon. Charles M. Hough,
Hon. Martin T. Manton,
Circuit Judges.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

v.

MANHATTAN & QUEENS TRACTION CORPORATION, Defendant; CITY OF NEW YORK, Appellant.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the order of said District Court be and it hereby is reversed with costs, without prejudice, however, to the right of the Receivers to renew their application after the adoption of the proposed

resolution by the Board of Estimate and Apportionment if the Receivers then have reason to believe that The City of New York is proposing to take into its possession any of the visible and tangible property which has come into their hands as Receivers and which they are advised the City of New York is not entitled to take from their possession by virtue of the resolution aforesaid.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

M. T. M.
C. M. H.

282 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Gas & Elec. Co. v. Manhattan & Queens Co. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 4, 1920. William Parkin, clerk.

283 United States Circuit Court of Appeals for the Second Circuit.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR C. Hume, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

To the Honorable Henry W. Rogers, or to Any Circuit Judge of the United States Circuit Court of Appeals for the Second Circuit:

The above named William R. Begg and Arthur C. Hume, as receivers of the Manhattan and Queens Traction Corporation, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 4th day of March, 1920, by the Circuit Court of Appeals for the Second Circuit, reversing the injunction order of the District Court of the United States for the Eastern District of New York entered herein on the 15th day of June, 1918, and resettled and reentered herein on the 24th day of August, 1918, do hereby appeal from the said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith, and made a part hereof, and they pray that their appeal be allowed, and that citation issue as provided by law, and that a transcript of the 284 record proceedings and papers upon which said decree is based, duly authenticated, may be sent to the Supreme Court of the United States, under the rules of such Court in such cases made and provided.

That the jurisdiction of the District Court of the United States for the Eastern District of New York in granting said injunction order

entered herein June 15th, 1918 and re-settled and re-entered herein August 24th, 1918, depended upon diversity of citizenship and federal questions appearing in the bill and petition in due form, and this is not a case in which the jurisdiction of the Circuit Court of Appeals is made final; and that the amount involved and the matter in controversy exceeds the sum of one thousand dollars ($1,000) besides costs.

And your petitioners further pray that the proper order touching the security to be required of them to perfect their appeal be made, and that a proper order be made restoring and continuing in force the injunction in this case embodied in said orders of the United States District Court for the Eastern District of New York during the pendency of the appeal and fixing bond therefor.

Dated New York, April 9th, 1920.

CHAS. A. FRUEAUFF,
ROBERT S. SLOAN,
Solicitors for Petitioners-Receivers.

Office & P. O. Address, 60 Wall Street, Borough of Manhattan, New York City.

Upon the foregoing petition of the receivers of the Manhattan and
Queens Traction Corporation, and on motion of Robert S.
285 Sloan, Esq., their solicitor, it is hereby

Ordered that the petition of the said receivers be granted, and the appeal therein prayed be allowed, and that a duly authenticated transcript of the record proceedings and papers upon which said decree is based be sent to the Supreme Court of the United States, and it is

Further ordered that the injunction in this cause embodied in the order of the United States District Court for the Eastern District of New York, entered herein June 15th, 1918, and re-settled and re-entered herein August 24th, 1918, be restored and held in effect during the pendency of this appeal upon the receivers filing bond duly approved by some one of the Judges in the Circuit Court of Appeals in the sum of $2,500.00, conditioned as required by law, and that the same act as a supersedeas bond, and also as a bond for costs and damages on appeal.

Dated, April 14th, 1920.

HENRY WADE ROGERS,
Circuit Judge.

286 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. Gas & Electric Securities Co., Plaintiff, against Manhattan & Queens Traction Corporation, Defendant. In the Matter of the Petition of William R. Begg and Arthur C. Hume Receivers of Deft., etc. (Copy.) Petition on Appeal and Order. Frueauff, Robinson & Sloan. Attorneys for Receivers, Office and P. O. Address, 60 Wall Street, Borough of Manhattan, New York City. United States Circuit Court of Appeals, Second Circuit. Filed Apl. 15, 1920. William Parkin, Clerk.

287 Circuit Court of the United States for the Second Circuit.

In Equity. No. 440

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of William R. Begg and Arthur C. Hume, Receivers of Defendant, Relative to the Franchise and Property of the Defendant.

Now comes William R. Begg and Arthur C. Hume, Receivers of the Manhattan and Queens Traction Corporation, petitioners in the above entitled cause, and file the following assignment of errors upon which they will rely upon their prosecution of the appeal in the above entitled cause from the decree made by this honorable Circuit Court of Appeals for the Second Circuit, on the 4th day of March, 1920, reversing the injunction order of the District Court of the United States for the Eastern District of New York, entered June 15th, 1918 and re-settled and re-entered August 24th, 1918.

I.

That the Circuit Court of Appeals for the Second Circuit erred in reversing the injunction order of the United States District Court for the Eastern District of New York, entered herein on the 15th day of June, 1918, and re-entered on the 24th day of August, 1918.

II.

288 That the Circuit Court of Appeals for the Second Circuit erred in dissolving the injunction embodied in the order of the United States District Court for the Eastern District of New York, entered June 15th, 1918 and re-settled and re-entered August 24th, 1918.

III.

The Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New York, declaring forfeited the franchise contract of the Manhattan and Queens Traction Corporation, dated October 29th, 1912, and its amendments, would be a violation of Article V of the Amendments to the Constitution of the United States, in that by the passage of the said resolution the Manhattan and Queens Traction Corporation would be deprived of its property without due process of law.

IV.

That the Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New York declaring forfeited the franchise contract of the Manhattan and Queens Traction Corporation, dated October 29th, 1912, and its amendments, would be a violation of Article V of the Amendments to the Constitution of the United States, in that by the passage of said resolution the private property of the Manhattan and Queens Traction Corporation would be taken for public use without just compensation.

V.

289 That the Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New York declaring that the railway constructed and in use by virtue of said franchise contract dated October 29th, 1912, and its amendments, shall become the property of the City of New York without proceedings at law or in equity, would be a violation of Article V of the Amendments to the Constitution of the United States, in that by the passage of the said resolution, the Manhattan and Queens Traction Corporation would be deprived of its property without due process of law.

VI.

That the Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New York, declaring that the railway constructed and in use by virtue of said franchise contract dated October 29th, 1912, and its amendments, shall become the property of the City of New York without proceedings at law or in equity, would be a violation of Article V of the Amendments to the Constitution of the United States, in that by the passage of the said resolution the private property of the Manhattan and Queens Traction Corporation would be taken for public use without just compensation.

VII.

That the Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New York, declaring forfeited the franchise contract of the Man-
290 hattan and Queens Traction Corporation dated October 29th, 1912, and its amendments would be a violation of Section I of Article 14 of the Amendments to the Constitution of the United States, in that by the passage of said resolution the Manhattan and

Queens Traction Corporation and its receivers would be denied the equal protection of the laws.

VIII.

That the Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New York, declaring that the railway constructed and in use by virtue of said franchise contract of the Manhattan and Queens Traction Corporation, dated October 29th, 1912, and its amendments, shall become the property of the City of New York, without proceedings at law or in equity, would be in violation of Section I of Article 14 of the Amendments to the Constitution of the United States, in that by the passage of said resolution the Manhattan and Queens Traction Corporation and its receivers would be denied the equal protection of the laws.

IX.

That the Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New York, declaring forfeited the franchise contract dated October 29th, 1912, and its amendments, would be a violation of Section I of Article 14 of the Amendments to the Constitution of the United States, in that the Manhattan and Queens Traction Corporation and its receivers would be deprived of its and their property
291 without due process of law.

X.

That the Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New York, declaring that the railway constructed and in use by virtue of said franchise contract dated October 29th, 1912, and its amendments, shall become the property of the City of New York, without proceedings at law or in equity, would be a violation of Section I of Article 14 of the Amendments to the Constitution of the United States, in that by its passage the Manhattan and Queens Traction Corporation, and its receivers, would be deprived of its and their property without due process of law.

XI.

That the Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New York, declaring forfeited the franchise contract of the Manhattan and Queens Traction Corporation, dated October 29th, 1912, and its amendments would be a violation of Section 6 of Article First of

the Constitution of the State of New York, in that by the passage of the said resolution the Manhattan and Queens Traction Corporation would be deprived of its property without due process of law.

XII.

292 That the Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New York, declaring forfeited the franchise contract of the Manhattan and Queens Traction Corporation, dated October 29th, 1912, and its amendments would be a violation of Section 6 of Article First of the Constitution of the State of New York, in that by the passage of the said resolution the private property of the Manhattan and Queens Traction Corporation would be taken for public use without just compensation.

XIII.

The Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New York, declaring that the railway constructed and in use by virtue of said franchise contract dated October 29th, 1912, and its amendments, shall become the property of the City of New York without proceedings at law or in equity, would be a violation of Section 6 of Article First of the Constitution of the State of New York, in that by the passage of said resolution the Manhattan and Queens Traction Corporation would be deprived of its property without due process of law.

XIV.

The Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New York, declaring that the railway constructed and in use by virtue of said franchise contract dated October 29th, 1912, and its amendments,
293 shall become the property of the City of New York without proceedings at law or in equity, would be a violation of Section 6 of Article First of the Constitution of the State of New York, in that by the passage of the said resolution the private property of the Manhattan and Queens Traction Corporation would be taken for public use without just compensation.

XV.

The Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New

York, declaring forfeited the franchise contract of the Manhattan and Queens Traction Corporation dated October 29th, 1912, and its amendments, and declaring that the railway constructed and in use by virtue of said franchise contract and its amendments shall become the property of the City of New York without proceedings at law or in equity would be a violation of Section 7 of Article First of the Constitution of the State of New York in that by the passage of said resolution the private property of the Manhattan and Queens Traction Corporation would be taken for public use without compensation made and ascertained by a jury or by the Supreme Court of the State of New York with or without a jury, or by no less than three commissioners appointed by a Court of Record.

XVI.

That the Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that by the passage of the proposed resolution by the Board of Estimate and Apportionment of the City of New York, declaring forfeited the franchise contract of the Manhattan and Queens Traction Corporation, dated October 29th,
294 1912, and its amendments, would be a violation of and unauthorized by Section 73 of the Charter of the City of New York, Chapter 378 of the Laws of 1897 as amended by Chapter 466 of the Laws of 1901 and 629 of the Laws of 1905, in that the said Charter does not grant to the City the authority to provide for the forfeiture of a grant for the failure to extend a street railway.

XVII.

That the Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that by the passage of said proposed resolution by the Board of Estimate and Apportionment of the City of New York declaring that the railway constructed and in use by virtue of said franchise contract dated October 29th, 1912 and its amendments, shall become the property of the City of New York, without proceedings at law or in equity, would be a violation of Section 73 of the Charter of the City of New York, in that said Charter does not grant the power, right or authority to the City of New York to forfeit the railway of the Manhattan and Queens Traction Corporation, constructed and in use by virtue of said franchise contract and its amendments for failure to extend said railway or for any other reason whatsoever.

XVIII.

That the Circuit Court of Appeals for the Second Circuit erred in finding and determining that the City of New York had the power, by virtue of Section 73 of the Charter of the City of New York, to make provision by way of forfeiture of the franchise contract of the Manhattan and Queens Traction Corporation,
295 dated October 29th, 1912, and its amendments for the failure

of the Traction Corporation to extend its railway from the intersection of Sutphin Road and Lambertville Avenue to the intersection of Central Avenue and Springfield Road.

XIX.

That the Circuit Court of Appeals for the Second Circuit erred in not finding and decreeing that the provisions for forfeiture in the franchise contract of the Manhattan and Queens Traction Corporation, dated October 29th, 1912 and its amendments, were ultra vires of the City of New York.

XX.

That the Circuit Court of Appeals for the Second Circuit erred in not finding and determining that Section 73 of the Charter of the City of New York did not give the City of New York power to make provision by way of forfeiture of the franchise contract of the Manhattan and Queens Traction Corporation, dated October 29th, 1912, and its amendments, for the taking of the railway constructed and in use by virtue thereof without just compensation.

XXI.

That the Circuit Court of Appeals for the Second Circuit erred in not finding and determining that the City of New York had no power or right under Section 73 of the Charter of the City of New York to make any provision by way of forfeiture of the franchise contract of the Manhattan and Queens Traction Corporation, dated October 29th, 1912, and its amendments, other than to secure efficiency of public service at reasonable rates and the maintenance of the property in good condition throughout the full term of
296 the said grant.

XXII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the court below did not have power to restrain the Board of Estimate and Apportionment of the City of New York from proceeding to declare, as threatened, the forfeiture of the franchise of the Manhattan and Queens Traction Corporation, dated October 29th, 1912, and its amendments.

XXIII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the City of New York had power to grant a conditional consent to the Manhattan and Queens Traction Corporation which might be withdrawn by the City of New York at any time.

XXIV.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the threatened action of the City of New York to forfeit the franchise contract of the Manhattan and Queens Traction Corporation, dated October 29th, 1912, and its amendments, was a revocation of its consent to the construction and operation of the street railway of the said Traction Corporation.

XXV.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the Board of Estimate and Apportionment of the City of New York, in granting the franchise contract to the Manhattan and Queens Traction Corporation dated October 29th, 1912, and its amendments, acted in its legislative capacity.

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XXVI.

The Circuit Court of Appeals for the Second Circuit erred in finding and determining that the Board of Estimate and Apportionment of the City of New York by passing the resolution declaring forfeited the franchise contract of the Manhattan and Queens Traction Corporation and its amendments equally acted in a legislative capacity.

XXVII.

The Circuit Court of Appeals for the Second Circuit erred in finding and determining that the Court below did not have jurisdiction to enjoin the Board of Estimate and Apportionment of the City of New York from passing the proposed resolution of forfeiture quoted in the opinion of the Circuit Court of Appeals for the Second Circuit.

XXVIII.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the passage of the proposed resolution declaring forfeited the franchise contract of the Manhattan and Queens Traction Corporation was not municipal legislation.

XXIX.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the proposed action of the Board of Estimate and Apportionment, in threatening to pass a resolution forfeiting the franchise contract of the Manhattan and Queens Traction Corporation and its amendments, was a judicial question and one which must be disposed of by the adjudication of the court below.

XXX.

The Circuit Court of Appeals for the Second Circuit erred
298 in not holding and determining that the Board of Estimate and Apportionment of the City of New York, in attempting to forfeit the franchise contract of the Manhattan and Queens Traction Corporation and its amendments, was at most only attempting to enforce a contract right and was not acting in a legislative or governmental capacity in so doing.

XX-I.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the lower court did not have power by injunction to restrain the City of New York and its Board of Estimate and Apportionment from taking the contemplated action and passing the proposed resolution forfeiting the franchise contract of the Manhattan and Queens Traction Corporation, even though the contemplated action might have been in disregard of constitutional restraints and might have impaired the obligation of the said franchise contract.

XXXII.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the foreiture of the franchise contract of the Manhattan and Queens Traction Corporation and its amendments was a judicial question to be adjudicated in a direct proceeding brought by the State of New York through its attorney general.

XXXIII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that a formal judicial proceeding was unnecessary in this case before the City of New York and its
299 Board of Estimate and Apportionment could forfeit the franchise contract of the Manhattan and Queens Traction Corporation and its amendments.

XXXIV.

The Circuit Court of Appeals for the Second Circuit erred in holding that the Manhattan and Queens Traction Corporation did not comply with its franchise contract, dated October 29th, 1912, and its amendments.

XXXV.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the Manhattan and Queens Traction

Corporation did not construct and put in operation its railway beyond the intersection of Sutphin Road and Lambertville Avenue within the time allowed for that purpose under the franchise contract, dated October 29, 1912, and its amendments.

XXXVI.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the franchise contract, dated October 29th, 1912, and its amendments, automatically ceased and determined on the 23rd day of August, 1917.

XXXVII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the Manhattan and Queens Traction Corporation was prevented from constructing and operating its road beyond the intersection of Sutphin Road and Lambertville Avenue, because of physical impossibility of securing materials therefor, prior to the 23rd day of August, 1917, and that such physical impossibility was not an excuse for failure so to do.

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XXXVIII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the Manhattan and Queens Traction Corporation and the receivers had no legal excuse for the failure of the Manhattan and Queens Traction Corporation to construct and put in operation its railway beyond the intersection of Sutphin Road and Lambertville Avenue on or before August 23rd, 1917.

XXXIX.

The Circuit Court of Appeals for the Second Circuit erred in holding and determininig that the terms and conditions of the franchise contract, dated October 29th, 1912, and its amendments, and of the forfeiture thereof are to be determined by the City of New York through its Board of Estimate and Apportionment, both as respects the grant and the forfeiture thereof.

XL.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the Manhattan and Queens Traction Corporation and its receivers are estopped to contest the validity of the conditions and covenants of the franchise contract of October 29th, 1912, and its amendments, either as ultra vires the municipality or as beyond its own powers.

XLI.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the Manhattan and Queens Traction Corporation is estopped from questioning the validity of the terms and conditions of the franchise contract of October 29th, 1912, and its amendments, and of the terms and conditions of the forfeiture provisions thereof.

301

XLII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that it could make no difference that the franchise contract of October 29th, 1912, and its amendments were forfeited automatically by failure to complete the line from the intersection of Sutphin Road and Lambertville Avenue within the period prescribed and that the forfeiture "of the railway" to the City of New York was to become effective from the date of the passage of the enjoined resolution.

XLIII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the forfeiture of the franchise contract is as good as the forfeiture of the railway.

XLIV.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that title to the streets involved between the intersection of Sutphin Road and Lambertville Avenue and the intersection of Central Avenue and Springfield Road was vested in the City of New York on the 16th day of February, 1917.

XLV.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the resolution adopted by the Board of Estimate and Apportionment on February 16th, 1917, directing the Manhattan and Queens Traction Corporation to commence the construction of that portion of its street railway authorized by its franchise contract and amendments from the
302 intersection of Sutphin Road and Lambertville Avenue to the intersection of Central Avenue and Springfield Road within thirty (30) days, and to complete and put in operation the said portion of its street railway within six months from February 23rd, 1917, was void as being in violation of Section 3, paragraph Seventh of the franchise contract of October 29th, 1912, as amended January 21st, 1916, for the reason that title to all portions of the

streets involved was not vested in the City of New York and said streets were not regulated and graded to their legal grade and full width on February 16th, 1917, as required by said franchise contract and its said amendments.

XLVI.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that because title to the right of way of the Long Island Railroad, upon which are its tracks and which crosses Lambertville Avenue just west of Carlisle Street, was not vested in the City of New York on the 16th day of February, 1917, presented no obstacle in the construction of the railway of the Manhattan and Queens Traction Corporation on Lambertville Avenue.

XLVII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that title to the streets between the intersection of Sutphin Road and Lambertville Avenue and the intersection of Central Avenue and Springfield Road was vested in the City on February 16th, 1917, so that the Board of Estimate and Apportionment could compel the Traction Corporation to construct and put in operation its railway between said points.

XLVIII.

The Circuit Court of Appeals for the Second Circuit erred
303 in not holding and determining that the Manhattan and Queens Traction Corporation was not required by the terms of the franchise contract of October 29th, 1912, and its amendments to construct a trestle over the tracks of the Long Island Company where the said tracks cross Lambertville Avenue.

XLIX.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the City of New York through its Board of Estimate and Apportionment could, on February 16th, 1917, compel the Traction Corporation to construct its railway on Lambertville Avenue over the tracks of the Long Island Railroad where they cross said Avenue at Carlisle Street or forfeit the franchise contract.

L.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the Traction Corporation had not acquired the legal right, on February 16th, 1917, to cross the right of way of the Long Island Railroad on Lambertville Avenue at grade or otherwise.

LI.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that Lambertville Avenue, on February 16th, 1917, was "regulated and graded" as required by the franchise contract dated October 29th, 1912, and its amendment of January 21, 1916, by Section 3, paragraph Seventh of said amendment.

LII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that by Section 3, paragraph
304 Eighth of the franchise contract of October 29th, 1912, and its amendment of January 21st, 1916, the Manhattan and Queens Traction Corporation was required to construct a trestle over the tracks of the Long Island Railroad Company, where they cross Lambertville Avenue at Carlisle Street, and over the tracks of the Long Island Railroad Company where they cross Central Avenue, just west of Montauk Avenue and just east of Caxton Avenue.

LIII.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the construction of a trestle by the Manhattan and Queens Traction Corporation over the tracks of the Long Island Railroad Company, where they cross Lambertville Avenue and Central Avenue, was to be at the option of the Traction Corporation under the terms of the franchise contract and its amendment.

LIV.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the meaning of "regulated and graded" as used in the franchise contract of October 29th, 1912, and its amendment of January 21st, 1916, section 3, paragraph Seventh of said amendment, meant regulated and graded to a legal grade and full width as established by the City of New York.

LV.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the streets involved between the intersection of Sutphin Road and Lambertville Avenue and the intersection of Central Avenue and Springfield Road were regu-
305 lated and graded as required by the franchise contract of October 29th, 1912 and its amendment of January 21st, 1916, Section 3, paragraph Seventh thereof.

LVI.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that it was not the duty of the City of New York, under the terms of the franchise contract of October 29th, 1912, and its amendments, to remove poles, curbs, water hydrants, trees and other obstructions before the City could compel the Manhattan and Queens Traction Corporation to construct and put in operation its railroad beyond Sutphin Road and Lambertville Avenue.

LVII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that regulating and grading as provided in the franchise contract of October 29th, 1912, and its amendment of January 21, 1916, did not require such regulating and grading to be done by the City of New York, and did not include the removal of poles, trees, curbs, water hydrants and other obstructions from the streets involved as set forth in said franchise contract and its said amendment.

LVIII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that "regulating and grading" as used in the said franchise contract of October 29th, 1912 and its amendment of January 21st, 1916, only required the City to deposit dirt upon the street or cut out dirt from the street, consisting of a "fill" or a "cut."

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LIX.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that under the franchise contract and the amendment of January 21st, 1916, the Manhattan and Queens Traction Corporation was under the duty to prepare the way by removing obstructions from the streets involved.

LX.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that title to Central Avenue, composed of Ulster Avenue, Westchester Avenue, 117th Avenue and Dearborn Avenue, between the intersection of Springfield Road and the City Line, at the County of Nassau, was vested in the City of New York, on the 16th day of February, 1917.

LXI.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that, under the terms of the franchise

contract of October 29th, 1912, and its amendments, the City of New York through its Board of Estimate and Apportionment could compel the Manhattan and Queens Traction Corporation to construct and put in operation its railway beyond the intersection of Sutphin Road and Lambertville Avenue before title to Central Avenue, composed of Ulster Avenue, Westchester Avenue, 117th Avenue and Dearborn Avenue, had been vested in the City between Springfield Road and the City Line at the County of Nassau.

LXII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that on February 16th, 1917, title
307 had been vested in Central Avenue between Smith Street and Springfield Road as required by the franchise contract of October 29th, 1912, and its amendment of January 21, 1916.

LXIII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that Central Avenue, composed of Ulster, Avenue, Westchester Avenue, 117th Avenue, and Dearborn Avenue, was regulated and graded as February 16th, 1917, as required by the franchise contract of October 29th, 1912, and its amendment of January 21st, 1916.

LXIV.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the failure by the Traction Corporation to construct and put in operation its railway in accordance with the resolution of the Board of Estimate and Apportionment adopted February 16th, 1917, between the intersection of Sutphin Road and Lambertville Avenue and the intersection of Central Avenue and Springfield Road gave the City of New York the right to forfeit the entire franchise contract and its amendments.

LXV.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that at most the failure of the Manhattan and Queens Traction Corporation to construct and put in operation its railway as required by the resolution of February 16th, 1917, only permitted the forfeiture of the part uncompleted and not the part constructed and in use or the whole grant.

308 LXVI.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that, even if the Traction Corporation

had failed to make the extension provided for in the resolution of the Board of Estimate and Apportionment dated February 16, 1917, the City could only forfeit the franchise right to the portion which the Company failed to construct and put in operation or forfeit the sum of fifteen thousand dollars ($15,000) as a penalty in case the Company failed to construct the remainder of its route.

LXVII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the franchise contract of October 29th, 1912, and its amendments were automatically forfeited on the 23rd day of August, 1917, by the failure of the Traction Corporation to make the extension provided for in the resolution of February 16th, 1917, in that the City of New York did not rely upon Section 3, paragraph Seventh of the franchise contract of October 29th, 1912 and its amendments, but the City of New York relied upon and proceeded under Section 5, paragraph Thirteenth thereof, by giving to the Traction Corporation ten (10) days' notice of its intention to forfeit.

LXVIII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the franchise contract of October 29th, 1912, and its amendments were automatically forfeited on the 23rd day of August, 1917, for the failure to perform a condition subsequent.

LXIX.

309 The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the City of New York could forfeit the franchise contract of the Traction Corporation and its amendments for failure to comply with a condition subsequent—the making of the extension provided for by the resolution of February 16th, 1917, or that there was an automatic forfeiture of the grant for such a failure of a condition subsequent.

LXX.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the franchise contract and its amendments were automatically forfeited for failure to make the extension provided for by the resolution of February 16th, 1917, in that such failure or breach was not a breach or failure to comply with any provisions contained in the franchise contract of October 29th, 1912, and its amendments, but merely a failure to comply with a resolution of the Board of Estimate and Apportionment.

LXXI.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the court below did not have the power to protect the property in its possession from being taken by the threatened action of the City of New York by the passage of the proposed forfeiture resolution.

LXXII.

The Circuit Court of Appeals for the Second Circuit erred in holding that the Court below as a court of equity did not have power to relieve against threatened forfeiture the franchise contract and its amendment and of the property in its possession for
310 failure of the Traction Corporation to perform a condition subsequent.

LXXIII.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that when the City of New York became a party to the franchise contract of the Traction Corporation, the same rules of law applied to the City of New York as to private persons under like circumstances.

LXXIV.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the court below had jurisdiction to enjoin threatened action of the City of New York on the ground that the injury to the property in the possession of its receivers would be irreparable.

LXXV.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the threatened action of the City of New York to forfeit the franchise contract of the Manhattan and Queens Traction Corporation, and its amendments, related to contractual rights and was subject to the control of the court below.

LXXVI.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the court below as a court of equity had a right to enjoin the passage of the proposed resolution of forfeiture by the Board of Estimate and Apportionment, whether such threatened act be apparently legislative, judicial or administrative or whether it partook of one or more of those characteristics.

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LXXVII.

The Circuit Court of Appeals for the Second Circuit erred in not holding the court below as a court of equity could enjoin the City of New York and its Board of Estimate and Apportionment from passing the proposed resolution of forfeiture on the ground that passage thereof would result merely in the imposition of an enormous penalty.

LXXVIII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the franchise contract of October 29th, 1912, and its amendments made time of the essence of the said franchise contract relative to extensions beyond the intersection of Sutphin Road and Lambertville Avenue.

LXXIX.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the court below as a court of equity could not relieve the Manhattan and Queens Traction Corporation from failure to extend its railway beyond the intersection of Sutphin Road and Lambertville Avenue as required by the Resolution of February 16th, 1917.

LXXX.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that equity gives no relief for forfeiture growing out of breach of a covenant to do some subsequent act.

LXXXI.

The Circuit Court of Appeals for the Second Circuit erred in holding that the franchise contract of October 29th, 1912
312 and its amendments were statutory legislation in the State of New York as found in the Charter of the City of New York.

LXXXII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the court below as a court of equity was without power to grant to the receivers relief from the claimed forfeiture of the franchise contract of October 29th, 1912, and its amendments.

LXXXIII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the proposed resolution of forfeiture

was statutory legislation by the State of New York as found in the Charter of the City of New York.

LXXXIV.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the legal status of the franchise contract of October 29th, 1912 and its amendments, and the rights of the Manhattan and Queens Traction Corporation to the property and structures created in the execution of the franchise should be determined only in direct litigation instituted by the Attorney General of the State of New York on behalf of the State.

LXXXV.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the acceptance of taxes from the Manhattan and Queens Traction Corporation by the Comptroller of the City of New York for the year ending September 30th, 1917, did not bar the City from claiming a forfeiture of the franchise contract and its amendments.

313

LXXXVI.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the resolution of February 16th, 1917, directing the extension of the Manhattan and Queens Traction Corporation, was not void for the reason that it was adopted without notice to the Manhattan and Queens Traction Corporation.

LXXXVII.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the State of New York had placed within the jurisdiction of the Public Service Commission of the State of New York sole power over extensions and the right to direct the same by street railways within the City of New York.

LXXXVIII.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the City of New York through its Board of Estimate and Apportionment, without a proceeding in law or in equity, had power to enforce a fine or penalty against the Manhattan and Queens Traction Corporation.

LXXXIX.

The Circuit Court of Appeals for the Second Circuit erred in not holding and determining that the resolution of February 16th, 1917, directing the Manhattan and Queens Traction Corporation to extend

its route, was void in that said resolution directed an extension of less than the remainder of the route.

XC.

314 The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the Board of Estimate and Apportionment of the City of New York had authority, under the franchise contract of the Manhattan and Queens Traction Corporation and its amendments, to direct the Manhattan and Queens Traction Corporation to make an extension of its route less than the remaining portion thereof.

XCI.

The Circuit Court of Appeals for the Second Circuit erred in holding and determining that the state of war between the United States and the Imperial German Government and the resulting orders and directions of the President of the United States did not prevent and render impossible the extension of the railway of the Manhattan and Queens Traction Corporation as required by resolution of the Board of Estimate and Apportionment passed February 16th, 1917.

Wherefore, your petitioners, the receivers of the Manhattan and Queens Traction Corporation, pray that said decrees be reversed and the Circuit Court of Appeals directed to affirm the order of the United States District Court for the Eastern District of New York, entered June 15th, 1918, re-settled and re-entered August 24th, 1918, and for such other relief as the nature of the case demands.

CHAS. A. FRUEAUFF,
ROBERT S. SLOAN,
Silicitors for Petitioners-Receivers.

Office and Post-Office Address, 60 Wall Street, Borough of Manhattan, New York City.

315 [Endorsed:] Circuit Court of the United States for the Second Circuit. Gas and Electric Securities Company, Plaintiff, against Manhattan and Queens Traction Corporation, Defendant. In the Matter of the Petition of William R. Begg and Arthur C. Hume, Receivers of Defendant, relative to the franchise and property of the defendant. (Copy.) Assignments of Errors. Frueauff, Robinson & Sloan, Attorneys for Receivers, Office and P. O. Address, 60 Wall Street, Borough of Manhattan, New York City. United States Circuit Court of Appeals, Second Circuit. Filed Apl. 15, 1920. William Parkin, Clerk.

316 United States Circuit Court of Appeals for the Second Circuit.

In Equity. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR CARTER HUME, Receivers of Defendant, Appellees, Relative to the Franchise and Property of the Defendant, The City of New York, Appellant.

Know all men by these presents:

That we William R. Begg and Arthur C. Hume, as Receivers of the Manhattan and Queens Traction Corporation, as principals, and The Ætna Casualty and Surety Company, having an office at No. 100 William Street, New York City, and being a corporation organized and existing under the laws of the State of Connecticut, as Surety, are held and firmly bound unto the City of New York, in the sum of $2,500 lawful money of the United States to be paid to the City of New York; to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally and each of our successors by these presents.

317 Sealed with our seals and duly signed and executed by us this 15th day of April, 1920.

Whereas, the above named receivers have prosecuted an appeal to the Supreme Court of the United States to reverse an order and decree rendered and entered in the above entitled cause, on the 4th day of March, 1920, by the Circuit Court of Appeals for the Second Circuit, reversing an injunction order of the District Court of the United States for the Eastern District of New York, against the City of New York, its Board of Estimate and Apportionment, and others, entered herein on the 18th day of June, 1918, and re-settled and re-entered herein on the 24th day of August, 1918; and

Whereas, the Hon. Henry Wade Rogers, Circuit Judge of the Circuit Court of Appeals for the Second Circuit has ordered that the appeal to the Supreme Court of the United States prayed for by the receivers, be allowed, and has further ordered that the injunction in this cause embodied in the order of the United States District Court for the Eastern District of New York, entered herein June 18th, 1918, and re-settled and re-entered herein August 24th, 1918, be restored and held in effect during the pendency of this appeal, upon the receivers' filing a bond duly approved in the sum of $2,500, conditioned as required by law, and that the same act as a supersedeas bond, and also as a bond for costs and damages on appeal:

Now, therefore, the condition of this obligation is such that if the above named receivers shall prosecute their said appeal to 18 effect and answer all damages and costs if they fail to make their plea good, then this obligation shall be void; otherwise remain in full force and virtue.

WILLIAM R. BEGG,
ARTHUR C. HUME,
Receivers-Appellants.
THE ÆTNA CASUALTY AND SURETY COMPANY,
By M. A. JAMESON,
Resident Vice President.

Attest:
HARRY B. WATKINS,
[SEAL.] *Resident Assistant Secretary.*

STATE OF NEW YORK,
County of New York, ss:

On this 15th day of April, 1920, before me personally appeared William R. Begg, to me known and known to me to be one of the receivers, principals in the foregoing bond mentioned, and he duly acknowledged to me that he executed the foregoing bond as his free act and deed for the purposes therein set forth.

JOHN C. BANSER,
Notary Public, Kings County No. 443. [Notarial Seal.]

Kings County Register No. 1165.
Certificate filed in N. Y. County No. 451.
New York County Register's No. 1460.

My commission expires March 30, 1921.

STATE OF NEW YORK,
County of New York, ss:

On this 15th day of April, 1920, before me personally appeared Arthur C. Hume, to me known and known to me to be one of the receivers, principals in the foregoing bond mentioned, and he duly acknowledged to me that he executed the foregoing bond as his free act and deed for the purposes therein set forth.

HARRY FRANK,
[Notarial Seal.] *Notary Public, Kings Co. No.* 54.

Certificate filed in N. Y. Co. No. 84.
Register's Kings Co. No. 2045, N. Y. Co. No. 207.

My commission expires March 30, 1922.

The above and foregoing bond is hereby approved both as to sufficiency and form, this 15th day of April, 1920.

HENRY WADE ROGERS,
Circuit Judge.

319 STATE OF NEW YORK,
County of New York, ss:

On this 15th day of April, 1920, before me personally came M. A. Jameson to me known, who, being by me duly sworn, did depose and say: that he resides in the City of New Rochelle, New York; that he is Resident Vice President of The Ætna Casualty and Surety Company, the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; that he signed his name thereto by like order; that he is acquainted with Harry B. Watkins; that he knows him to be the Resident Assistant Secretary of said Company; that the signature of the said Harry B. Watkins subscribed to said instrument, is in the genuine handwriting of said Harry B. Watkins and was thereto subscribed by like order of the said Board of Directors, and in the presence of him, the said M. A. Jameson; and that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 33 of the Laws of the State of New York for the year 1909 constituting Chapter 28 of the Consolidated Laws of the State of New York known as the Insurance Law, as amended by Chapter 182 of the Laws of the State of New York for the year 1913, issued to The Ætna Casualty and Surety Company his certificate that said Company is qualified to become and be accepted as surety or guarantor on all bonds, undertakings, recognizances, guaranties and other obligations required or permitted by law; and that such certificate has not been revoked.

HAROLD C. MEGREW,
Notary Public.

My Commission Expires —.

Notary Public, N. Y. Co.
N. Y. Co. Clerk's No. 319, Register's No. 1402.
Certificate filed in Kings, Queens, Bronx, Richmond, Nassau, Rockland, Westchester.
Kings Co. Clerk's No. 84, Register's No. 1187.
Bronx Co. Clerk's No. 26, Register's No. 2176.
Queens Co. No. 1231.
Commision expires March 30, 1921.

At a regular meeting of the Board of Directors of The Ætna Casualty and Surety Company, duly called and held on the 28th day of December, A. D. 1911, the following By-Law was adopted:

Article 8. Resident Officers, Attorneys-in-Fact and Agents.

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-Fact and Agents to represent and act for and on behalf of the Company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any such Resident Vice-President, Resident Assistant Secretary, Attorney-in-Fact or Agent, and revoke the power and authority given him.

Section 2. Resident Vice-Presidents may, subject to the provisions and limits named in their certificate of authority, sign and execute on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the President or any other Officer could bind it; Such bonds and undertakings, however, to be attested in every instance by a duly appointed Resident Assistant Secretary.

Section 3. Resident Assistant Secretaries may, subject to the provisions and limits named in their certificate of authority, affix the seal of the Company to and attest on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the Secretary or any other Officer could bind it; such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President.

Section 4. Attorneys-in-Fact may, subject to the provisions and limits named in their certificate of authority, execute and deliver and attach the seal of the Company to any and all bonds and undertakings and other writings obligatory in the nature of a bond on behalf of the Company, and any such instrument executed by any such Attorney-in-Fact when attested by any other Attorney-in-Fact shall be as binding upon the Company as if signed, sealed, and attested by any Officer of the Company.

STATE OF NEW YORK,
County of New York, ss:

I, Harry B. Watkins, Resident Assistant Secretary of The Aetna Casualty and Surety Company, have compared the foregoing By-Law with the original thereof, as recorded in the Minute Book of said Company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of said original By-Law.

Given under my hand and the seal of the Company, at the City of New York, this 15th day of April, 1920.

HARRY B. WATKINS,
Resident Assistant Secretary.

320 The Ætna Casualty & Surety Company of Hartford, Connecticut.

Financial Statement as of December 31, 1918.

Assets.

Mortgage Loans		$1,442,100.00
Collateral Loans		605,815.05
Stocks & Bonds		6,591,985.15
Unpaid Premiums Subsequent to October 1, 1918		1,498,223.70
Unpaid Premiums prior to October 1,1918		84,603.31
Cash in Office & Banks		2,094,271.96
Accrued Interest		131,330.82
All other Assets		290,250.84
Total Assets		12,738,580.83
Deduct Assets not Allowed by Insurance Departments viz:		
Unpaid Premiums prior to October 1, 1918	84,603.31	
Other Assets	171,826.01	
		256,429.32
Admitted Assets on basis allowed by Insurance Departments		12,482,151.51

Liabilities.

Premium Reserve		$3,496,180.54
Claim Reserve		2,997,002.49
Reserve for Accrued Taxes		368,347.62
Reserve for other Liabilities		368,353.84
Reinsurance in other Cos.		11,559.95
Total Liabilities except Capital		7,241,444.44
Surplus	3,497,136.39	
Less Assets not allowed by Insurance Departments	256,429.32	
Surplus on basis allowed by Insurance Departments	3,240,707.07	
Capital Stock	2,000,000.00	
		5,240,707.07
Total		12,482,151.51

STATE OF NEW YORK,
County of New York, ss:

Harry B. Watkins being duly sworn, says: that he is Resident Assistant Secretary of The Ætna Casualty and Surety Company and

that, to the best of his knowledge and belief, the foregoing is a true and correct statement of the financial condition of said Company as of December 31, 1918.

HARRY B. WATKINS.

Subscribed and sworn to before me this 15th day of April, 1920.

HAROLD C. MEGREW,
Notary Public.

My Commission expires —.

Notary Public, N. Y. Co.
N. Y. Co. Clerk's No. 319, Register's No. 1402.
Certificate Filed in Kings, Queens, Bronx.
Richmond, Nassau, Rockland, Westchester.
Kings Co. Clerk's No. 84, Register's No —.
Bronx Co. Clerk's No. 26, Register's No. —.
Queens Co. No. —.
Commission expires M—.

321 Endorsed: Copy. United States Circuit Court of Appeals for the Second Circuit. Gas and Electric Securities Company, Plaintiff, against Manhattan and Queens Traction Corporation, Defendant. In the Matter of the Petition of William R. Begg and Arthur C. Hume, Receivers of Deft., Appellees, Relative to the Franchise and Property of the Defendant, The City of New York, Appellant. (Copy.) Supersedeas bond. Frueauff, Robinson & Sloan, Attorneys for Receivers, Office and P. O. Address, 60 Wall Street, Borough of Manhattan, New York City. United States Circuit Court of Appeals, Second Circuit. Filed Apl. 15, 1920. William Parkin, Clerk.

322 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 321 Vol. I and 1 to 14 Vol. II inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Gas and Electric Securities Company against Manhattan and Queens Traction Corporation, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 19th day of April in the year of our Lord One Thousand Nine Hundred and twenty and of the Independence of the said United States the One Hundred and forty-fourth.

[Seal of United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk.

323 United States Circuit Court of Appeals for the Second Circuit.

In Equity. No. 440.

GAS AND ELECTRIC SECURITIES COMPANY, Plaintiff,

against

MANHATTAN AND QUEENS TRACTION CORPORATION, Defendant.

In the Matter of the Petition of WILLIAM R. BEGG and ARTHUR C. Hume, Receivers of Defendant, Appellees, Relative to the Franchise and Property of the Defendant, The City of New York Appellant.

UNITED STATES OF AMERICA:

To the City of New York et al., Its Mayor, Board of Estimate and Apportionment and Corporation Counsel, Greeting:

You are hereby notified, that in the above entitled cause, in Equity 440, an appeal has been allowed William R. Begg and Arthur C. Hume, receivers of the Manhattan and Queens Traction Corporation by the order of Honorable Henry Wade Rogers, dated April 14th, 1920, by which order the injunction in this cause embodied in the order of the United States District Court for the Eastern District of New York, entered herein June 15th, 1918 aid re-settled and re-entered herein August 24th, 1918, is restored and held in effect during the pendency of this appeal, upon the receivers' filing bond duly approved by some one of the Judges in the Circuit Court of
324 Appeals, in the sum of $2,500, conditioned as required by law, and that the same act as a supersedeas bond, and that such a bond has been approved both as to sufficiency and form by the Honorable Henry Wade Rogers, on the 15th day of April, 1920, and

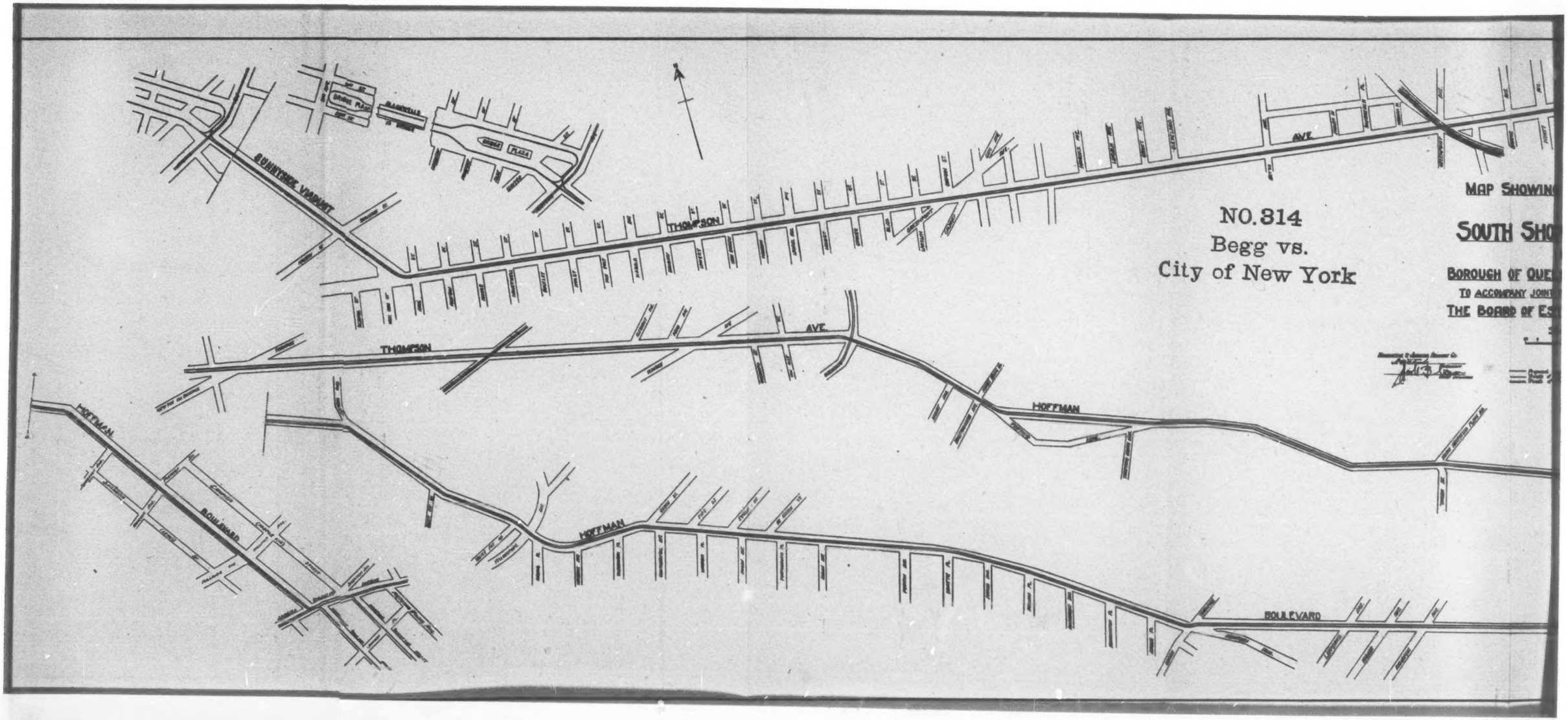
You are hereby cited and admonished, to be and appear in the Supreme Court of the United States to be held at the City of Washington, in the District of Columbia, United States of America, within thirty days from the date of this citation, pursuant to said order allowing said appeal filed and entered in the Clerk's office of the United States Circuit Court of Appeals for the Second Circuit, on the 15th day of April, 1920, wherein William R. Begg and Arthur C. Hume, receivers of the Manhattan and Queens Traction Corporation, are complainants-appellants, and the City of New York et al., are defendants-appellees, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness, the Honorable Henry Wade Rogers, one of the Circuit Judges of the United States Circuit Court of Appeals for the Second Circuit, this 15th day of April, A. D. 1920.

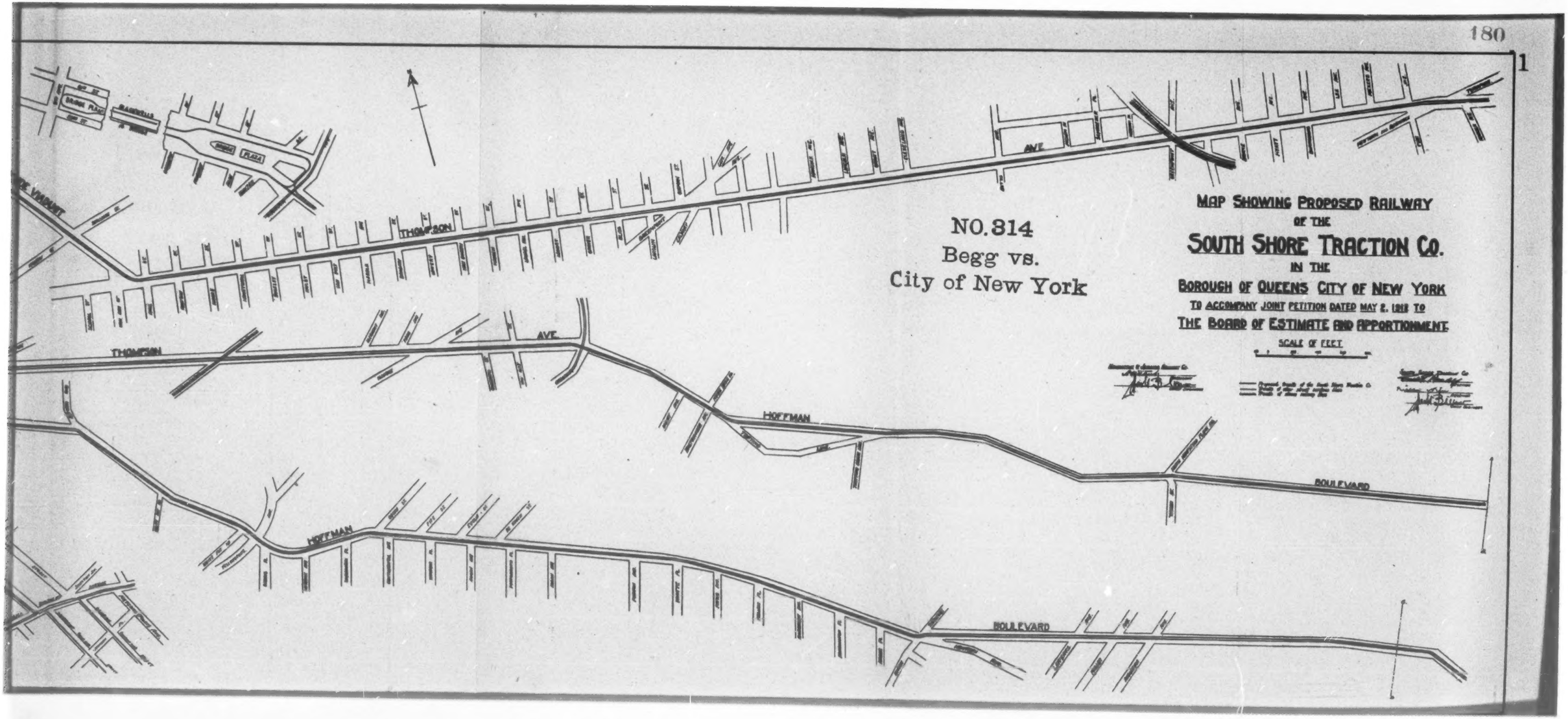
HENRY WADE ROGERS,
United States Circuit Judge.

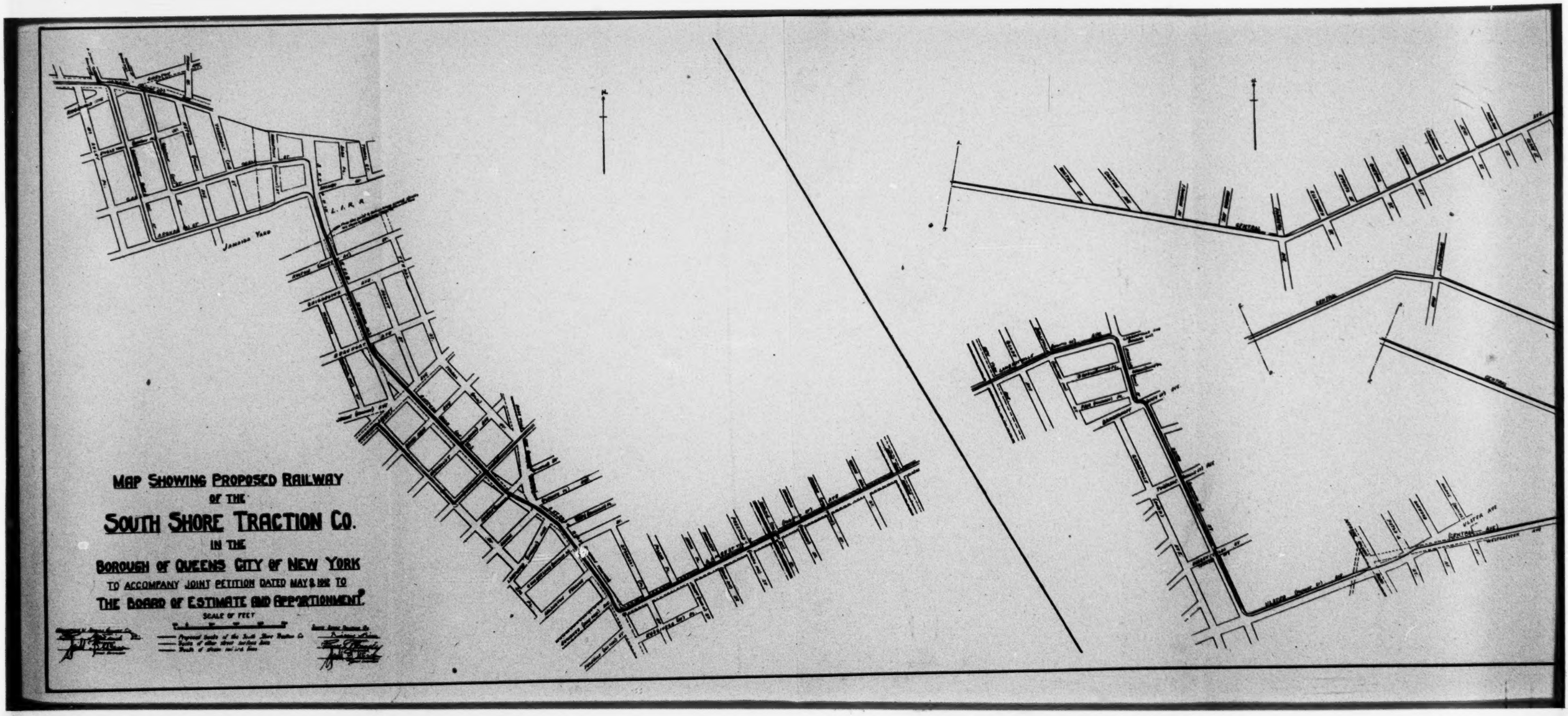
325 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. Gas and Electric Securities Company, Plaintiff, against Manhattan and Queens Traction Corporation, Defendant. In the Matter of The petition of William R. Begg and Arthur C. Hume, Receivers of Deft., Appellees, Relative to the Franchise and Property of the Defendant, The City of New York, Appellant. (Original.) Citation. Frueauff, Robinson & Sloan, Attorneys for Receivers, Office and P. O. Address, 60 Wall Street, Borough of Manhattan, New York City. A copy of the within paper has been this day received at the Office of the Corporation Counsel. Apr. 15, 1920. John P. O'Brien (Brennan), Corporation Counsel. Filed Apr. 15, 1920. United States Circuit Court of Appeals, Second Circuit. William Parkin, Clerk.

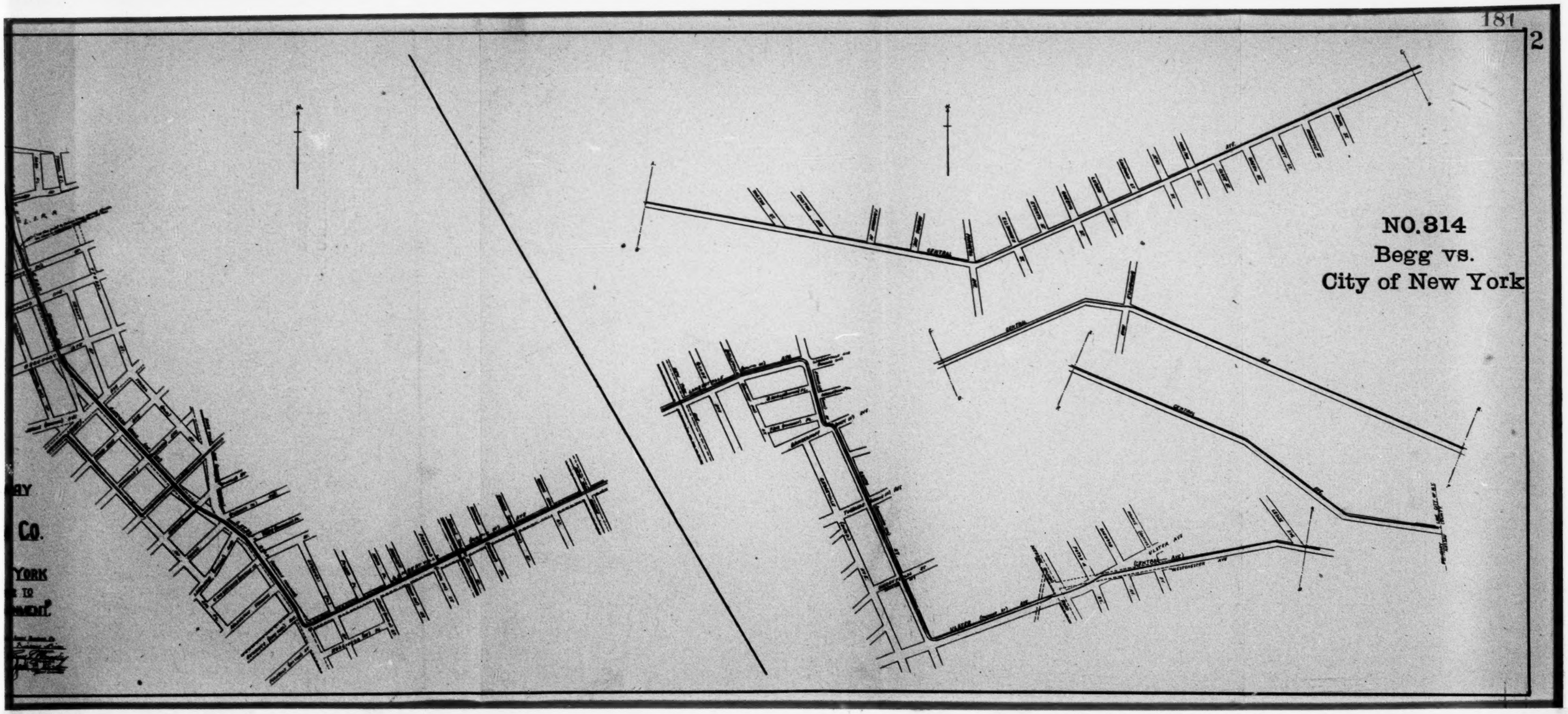
Endorsed on cover: File No. 27,638. U. S. Circuit Court Appeals, 2d Circuit. Term No. 314. William R. Begg and Arthur C. Hume, Receivers of the Manhattan & Queens Traction Corporation, Appllants, vs. The City of New York et al. Filed April 27th, 1920. File No. 27,638.


NO. 314
Begg vs.
City of New York
MAP SHOWING
SOUTH SHO
BOROUGH OF QUE
TO ACCOMPANY JOINT
THE BOARD OF ES
SUNNYSIDE VIADUCT
THOMPSON AVE.
THOMPSON
AVE.
HOFFMAN
HOFFMAN
HOFFMAN
BOULEVARD
BOULEVARD

1


NO. 314
Begg vs.
City of New York
MAP SHOWING PROPOSED RAILWAY
OF THE
SOUTH SHORE TRACTION CO.
IN THE
BOROUGH OF QUEENS CITY OF NEW YORK
TO ACCOMPANY JOINT PETITION DATED MAY 2, 1913 TO
THE BOARD OF ESTIMATE AND APPORTIONMENT
SCALE OF FEET
THOMPSON
AVE.
HOFFMAN
BOULEVARD


MAP SHOWING PROPOSED RAILWAY
OF THE
SOUTH SHORE TRACTION CO.
IN THE
BOROUGH OF QUEENS CITY OF NEW YORK
TO ACCOMPANY JOINT PETITION DATED MAY 8 1912 TO
THE BOARD OF ESTIMATE AND APPORTIONMENT.
SCALE OF FEET
JAMAICA YARD
L.I.R.R.
SUTPHIN BLVD.
ARCHER AVE.
ATLANTIC AVE.
ATLANTIC AVE.
ULSTER AVE.
HUNTINGTON AVE.
WESTCHESTER AVE.



NO.314
Begg vs.
City of New York

MAP SHOWING PROPOSED EXTENSIONS
OF ROUTE OF FRANCHISE OF
MANHATTAN AND QUEENS TRACTION CORPORATION
TO ACCOMPANY PETITION DATED APRIL 17, 1913.
TO THE BOARD OF ESTIMATE AND APPORTIONMENT

EXISTING FRANCHISE RIGHTS.
ROUTE APPLIED FOR.

SCALE IN FEET 0 50 100

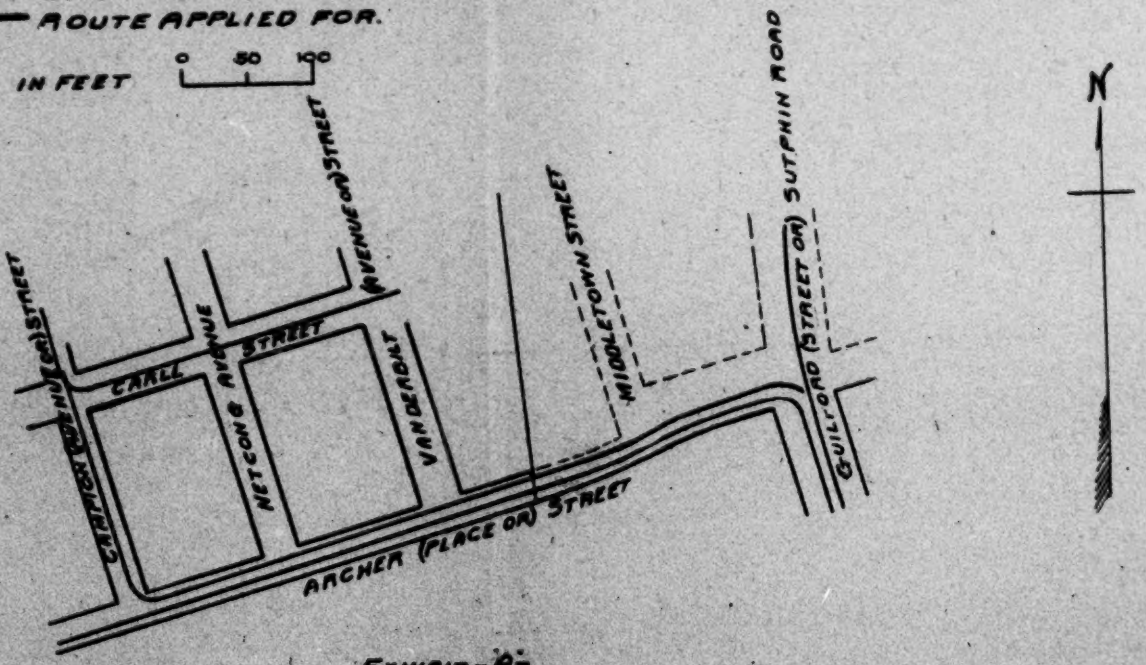
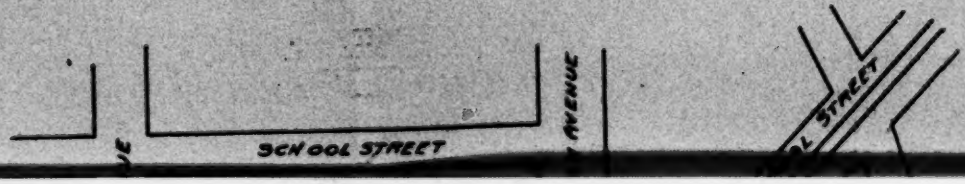


EXHIBIT - A -



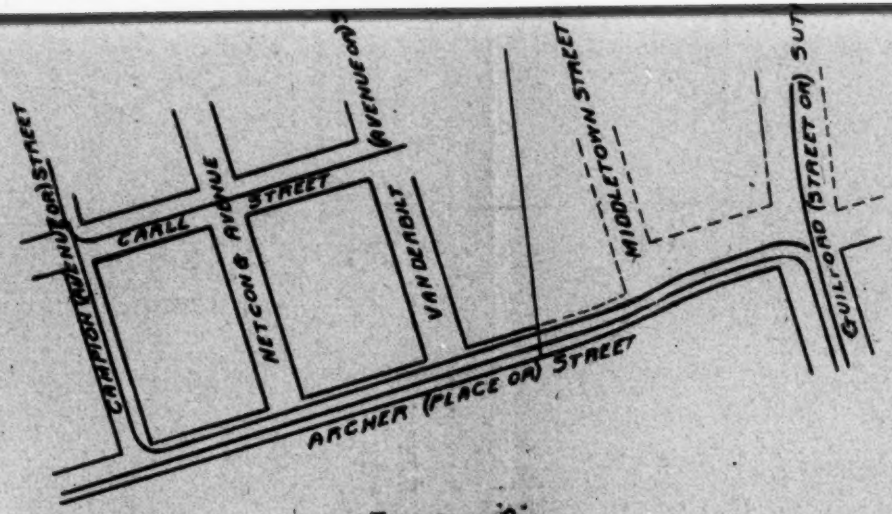
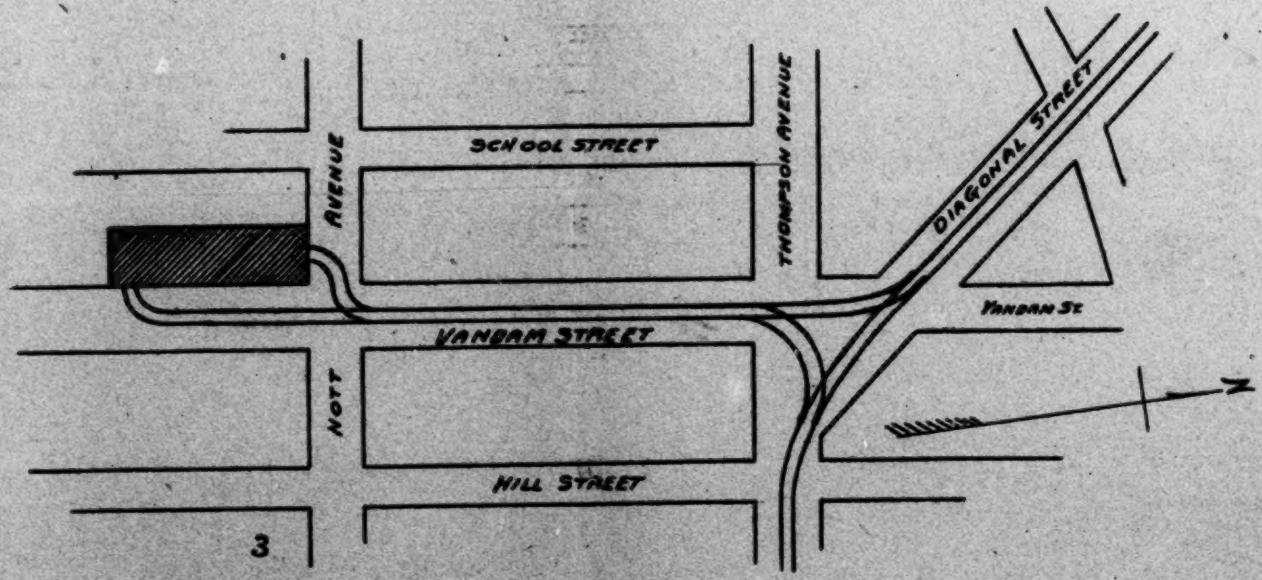


EXHIBIT -A-



NO. 814 EXHIBIT -B-

Begg vs.

City of New York

CERTIFIED
PRESIDENT
CHIEF ENGINEER

Exhibit "A"

Attached to Answer

Draft Damage Map

in the matter of acquiring title to

LAMBERTVILLE AVENUE

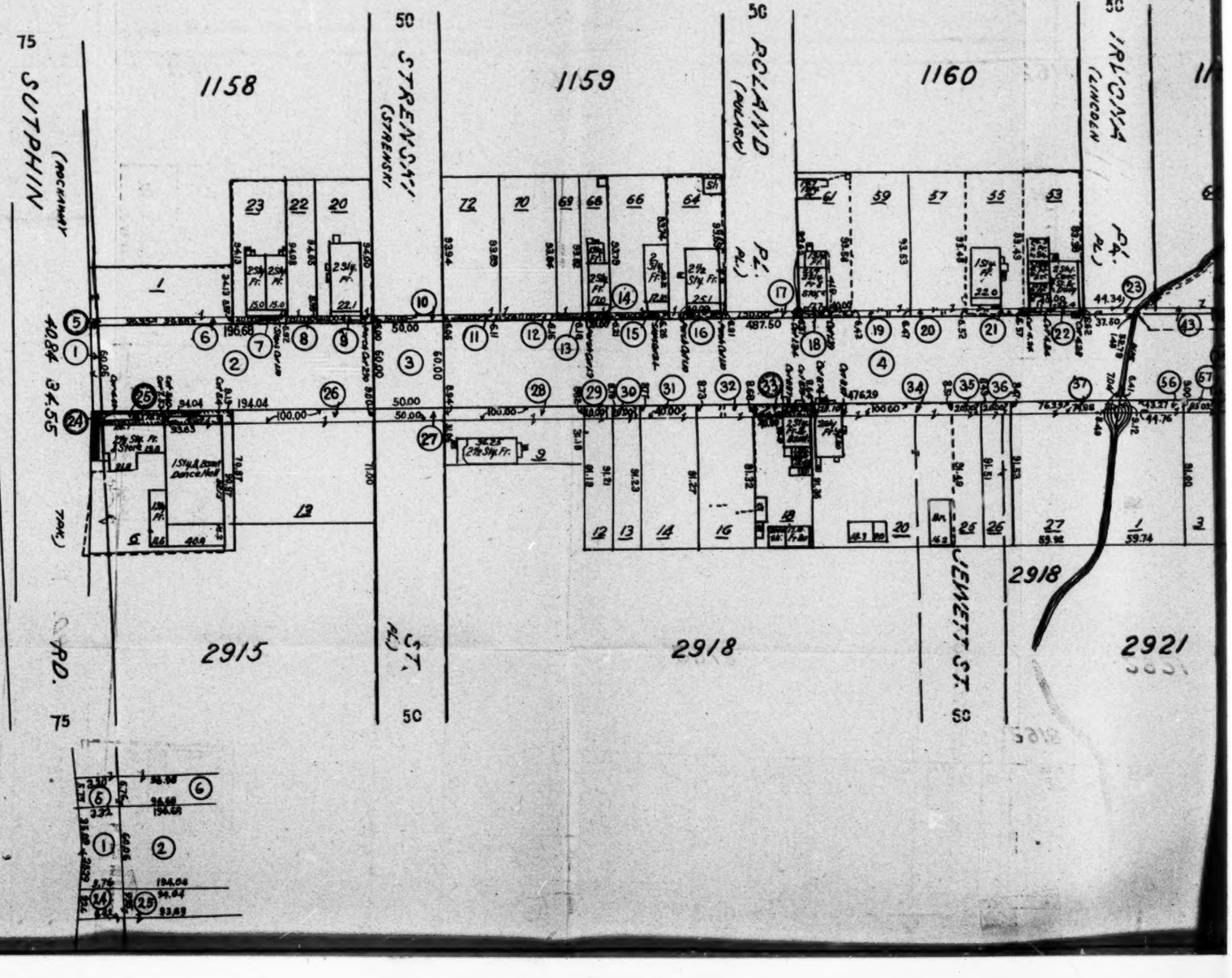
EXTENDING FROM

SUTPHIN ROAD to MERRICK ROAD

Approved by the Board of Estimate and Apportionment on .....

.....

Secretary.



1820.28

1160 | 1160 | 1161 | 1162 | 1163 | 1164

50 HOLLOWAY (LINCOLN) | 50 HOSCHKEN (BROWN) | 60 FREEHOLD (MORRIS) | 40 CARLISLE (RAILROAD) | 50 MEDFORD (MADISON) | 50 NEWARK (WASHINGTON)

1820.28

2918 | 2921 | 2922 | 2923 | 2924 | 2925

JEWETT ST. 50 | AVE. I ST. 60 | AVE. J ST. 60 | AVE. K ST. 40 | ST. 50 | ST. 50

1165

1166

1237

1238

1239

1302.49

UNION HALL

70 KEW YORK

50 GLOSE

50 BELLEVILLE (BROOKLYN

NO LAND TAKEN FR

PUBLIC SCHOOL #40

2926

2927

1244

1245

1246

297.16

1296.31

ST. 50

AVE. 70

AVE. 50

ST. 50

4

NO. 814
Begg vs
City of New York

MAP

SEE AMENDING MAP

408.34
NO LAND TAKEN FROM LOTS AS LAID OUT
1240
239
80
105
1246
297.16
1251
212.23
1252
328.35
NO LAND TAKEN FROM LOTS AS LAID OUT
SPANGLER ST. (LANE)
443.42
PLEASANT AVE.
1256
1257
MERRICK RD.
77.60
473.67
2½ Sty Frame
New Line
Old Line
R-4577 Δ 7'.90

Exhibit "C" attached to answer

Sulphin (Rockaway Tpke) Rd

Curb Line

50 St.

Building Line

Curb

LAMBERTVILLE

40

Curb

Building Line

Sulphin

Poland's St. 5

75 AVE.

Line

Building Line

Strenski

Red line & Figures Show Parcels to which The City has not yet obtained title.

(Prospect) 10 St.

Curb

LAMBERTVILLE

Building Line

Medford

Newark

(Washington) 50 St.

Building Line

Line

75

40

Line

Union Hall

50 St.

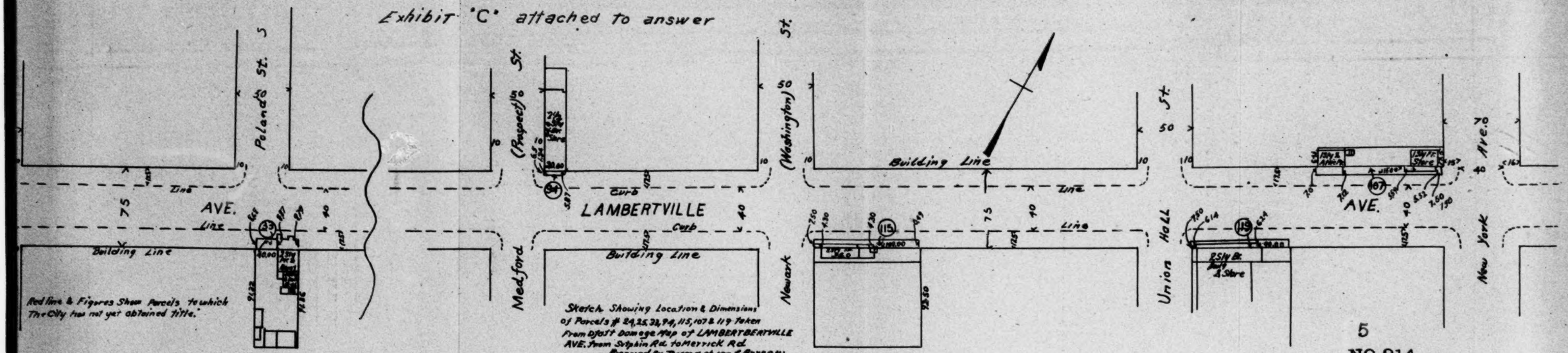
Sketch Showing Location & Dimensions of Parcels # 24, 25, 32, 94, 115, 107 & 119 Taken From Dept of Damage Map of LAMBERTVERTVILLE AVE. from Sulphin Rd. to Merrick Rd.

Prepared by Theodore Lobrecht Borough

Scale: 1"=50'

Traced by H.B.C. March 5, 1918

Exhibit "C" attached to answer



Sketch Showing Location & Dimensions of Parcels # 24, 25, 32, 94, 115, 107 & 119 Taken From Dist Damage Map of LAMBERTBERTVILLE AVE. from Sylvan Rd. to Merrick Rd.
Prepared By Topographical Bureau
Scale: 1"=50'
Traced by W.B.C. March 5, 1918

5
NO. 314
Begg vs.
City of New York

CITY OF NEW YORK, BOROUGH OF QUEENS

OFFICE OF THE PRESIDENT

TOPOGRAPHICAL BUREAU

MAP

SHOWING

A CHANGE IN THE STREET SYSTEM

HERETOFORE LAID OUT

BY ALTERING THE GRADES

OF

ULSTER AVE.

FROM SMITH ST. TO WESTCHESTER AVE.

WESTCHESTER AVE.

FROM ULSTER AVE. TO 117 TH AVE.

117 TH AVE.

FROM WESTCHESTER AVE. TO DEARBORN AVE.

AND

DEARBORN AVE.

FROM 117 TH AVE. TO NEW YORK CITY LINE

IN THE FOURTH WARD

NEW YORK, AUGUST 14 TH 1915

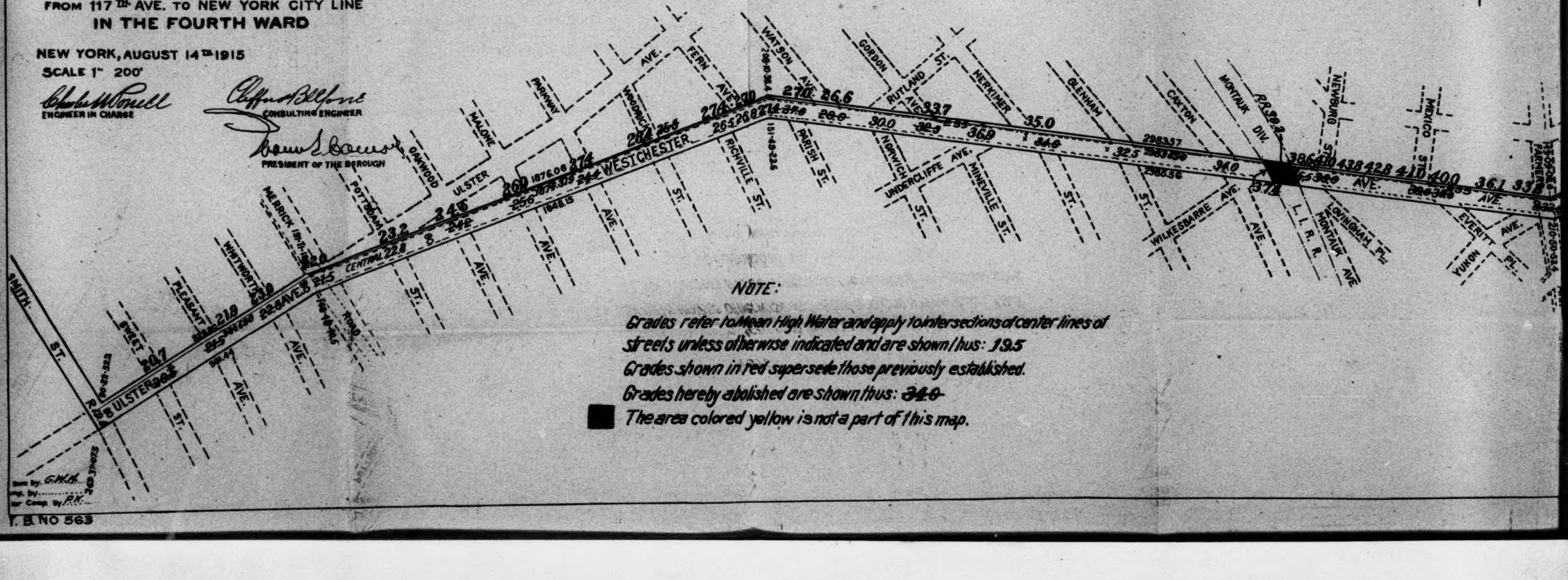
SCALE 1" 200'

Charles W Powell
ENGINEER IN CHARGE

Clifford B Lane
CONSULTING ENGINEER

James L Bowers
PRESIDENT OF THE BOROUGH

FILED AT
TOPOGRAPHICAL BUREAU
BOROUGH OF QUEENS
CITY OF NEW YORK
DATE Feb. 16-1916



NOTE:

Grades refer to Mean High Water and apply to intersections of center lines of streets unless otherwise indicated and are shown thus: 19.5

Grades shown in red supersede those previously established.

Grades hereby abolished are shown thus: ~~34.0~~

■ The area colored yellow is not a part of this map.

T. B. NO 563

I, JOSEPH HAAG, Secretary of the Board of Estimate and Apportionment of the City of New York, do hereby certify that this map is one of three similar maps made at the direction of and adopted by the said Board of Estimate and Apportionment on the 12th day of November 1915 and approved by the Mayor on the 18th day of November 1915 entitled: "MAP SHOWING A CHANGE IN THE STREET SYSTEM HERETOFORE LAID OUT BY ALTERING THE GRADES OF ULSTER AVE., FROM SMITH ST., TO WESTCHESTER AVE., WESTCHESTER AVE., FROM ULSTER AVE., TO 117TH AVE., 117TH AVE., FROM WESTCHESTER AVE., TO DEARBORN AVE., AND DEARBORN AVE., FROM 117TH AVE., TO NEW YORK CITY LINE IN THE FOURTH WARD."

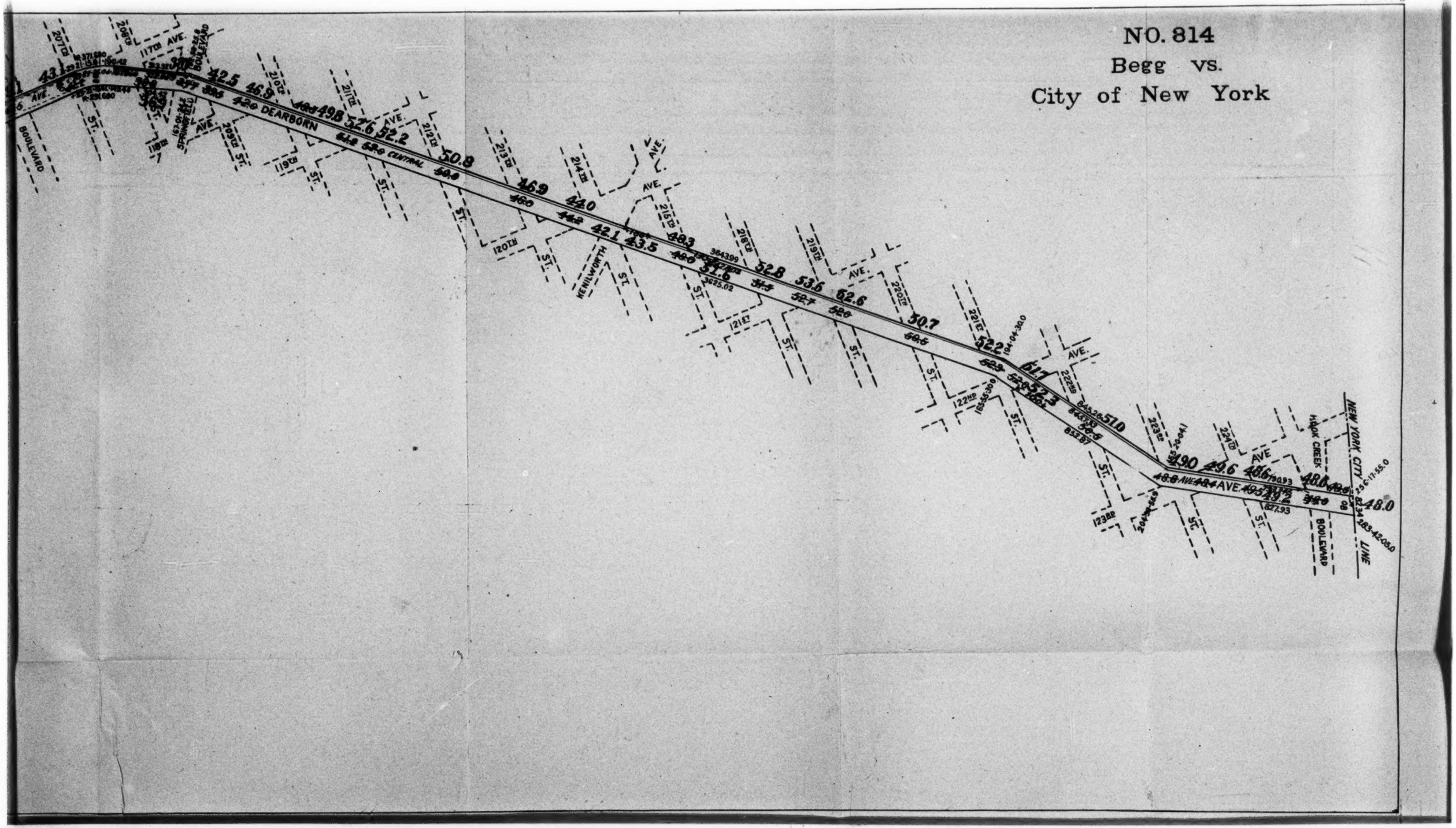
which map includes all of the area shown, with the exception of the portion colored yellow, and shall supersede all maps heretofore filed affecting the area embraced by said map, in so far as it makes any changes therein.

Prepared for the Board of Estimate and Apportionment under authority of the Charter of the City of New York.

Dated: NEW YORK. Feby. 10, 1916

Secretary, Board of Estimate & Apportionment.

NO. 814
Begg vs.
City of New York



ULSTER AVENUE.

PARCEL

60 SMITH (NEWLAND AVE)

60 SUSSEX (STREET AVE)

989.80

60 PLEASANT

60 WHITTIER CT

"A"

100 MERRICK

3087 3

3086 23

3090 18

1 Sty. Fr. Barn

30.2 x 24.2 2½ Sty. Fr.

1½ Sty. Fr. Barn

Col 48.13

Col 48.13

48.0±

58.0±

80.00

39.08

89.00

88.63

836.89

67.99

20.67

51.96

74.90

66.24

107.17

29.17

10.16

52.47

82.08

16.63

16.56

7.32

83.44

0.40

981.44

① ② ③ ④ ⑤ ⑥

ST. SMITH

ST.

ST.

AVE.

AVE.

RD.

60

100

WESTCHESTER

PARCEL

1293

1

60

660.38

POTTSDAM

80

OAKWOOD

ULSTER

MALONE

80

1876.06

80

PARKWAY

AVE.

1293

1

1293

1

1293

1

100

MERRICK

170.00

52.47

92.08

51.96

111.82

⑥

⑦

1569.33
1672.29
1810.11

⑨

1786.58

915.64
916.08

3109

1

3104

1

3104

1

3104

AVE.

50

1848.15

AVE.

Draft Damage Map

in the matter of acquiring title to:

ULSTER AVENUE 1296D

Extending from SMITH STREET to WESTCHESTER AVENUE

WESTCHESTER AVENUE 1301D

Extending from ULSTER AVENUE to 117TH AVENUE

117TH AVENUE 1302D

Extending from WESTCHESTER AVENUE to DEARBORN AVENUE

AND

DEARBORN AVENUE 1303D

Extending from 117TH AVENUE to THE CITY LINE

IN FOUR SECTIONS

SECTION 1

Approved by the Board of Estimate and Apportionment on

60 GRANT ST.

1322

14

RUTLAND RD

571.08

ST. 60

1326

32

60 HERKIMER

1894.46

1326

32

96.10

649.76

606.42

376.42

"A"

200.00

200.00

100.00

25.00

100.00

60 GLENHAM (WILTON ST.)

1327

1

100.00

100.00

50.00

59

100.00

50.00

25.00

25.00

100.00

25.00

50.00

850.55

60 CAXTON (CAXTON AVE.)

21

11

493.00
483.71
1897.72

1302.12
1274.5

1324.19

22

23

24

12

234.59±
326.2

1326

32

1322

14

3112

1

ST. 60

UNDERCLIFFE AVE.

MONTCLAIR

ST. 60

3112

1

1937.14

3112

1

ST. 60

3145

1

ST. 60

3145

1

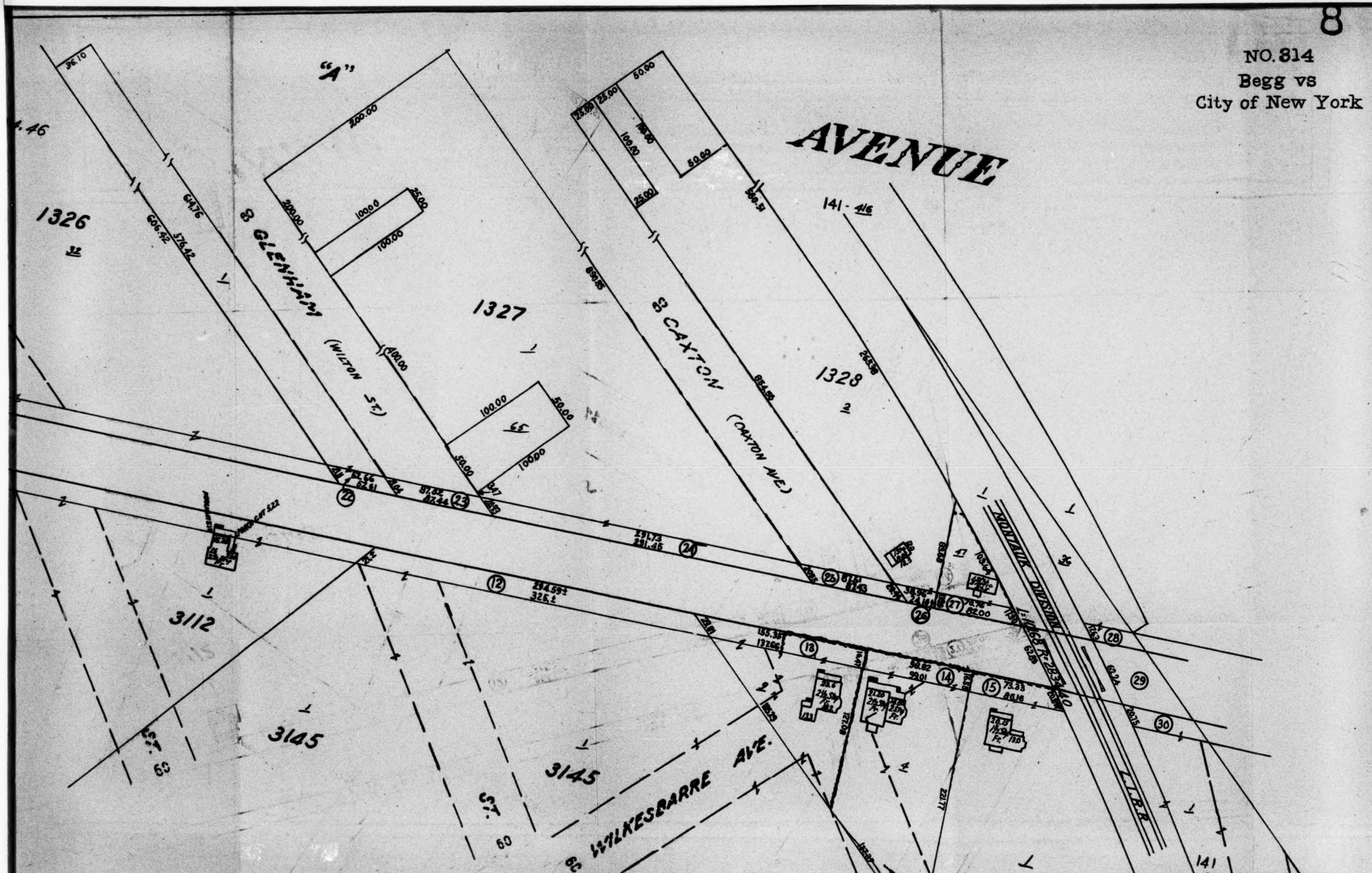
60 WILKESBARRE AVE.

D

D

D

NO. 814
Begg vs
City of New York



DATUM 10

Temporary Grade

Existing grade

0+00 | 0+17.5 | +50 | 1+00 | +50 | 2+00 | +58 | 3+00 | +50 | 4+00 | +50 | +83.5 | 5+08 | ×43 | 6+18 | +47 | +78 | 7+58 | +70 | 8+50 | +79 | 9+00 | +50 | 10+00 | +50 | 11+00 | +66 | +99 | 12+34 | 13+00 | +50 | +83 | 14+16 | +50 | 15+00 | +50 | 16+19 | +30 | +74 | 17+55 | 18+00

N. Side
℄
S. Side

SUTPHIN ROAD

STRENSKI ST.

POLAND PL.

IRVONA PL.

JEWETT ST.

HOBOKEN ST.

FREEHOLD ST.

CARLISLE ST.

MEDFORD ST.

LAMBERTVILLE 12" Water Main

12" Water

6" Gas

Damage Parcels Encroaching on Roadway and not to be Graded are Shown Shaded

Gas Main 3' below Present Surface
Water " 6' " " "

NEWARK ST.

UNION HALL ST.

NEW YORK AVE.

GLOBE AVES.

BELLEVILLE ST.

AVE.

SPANGLER ST.

PACKARD ST.

Cobble Gutters to be laid

Culvert. For Details: See "Plan & Sections for Concrete Culvert" etc.

Tree D.O. 0.3' | Tree D.as'

17+53 18+00 +54 +79 +94 19+50 20+00 +52 +84 21+60 +50 22+04 +29 23+9 +50 +85 24+50 +84 25+19 +54 +79 26+00 +55 27+00 +54 +79 28+04 +54 29+00 +68 30+04 +29 31+06 +50 32+32 33+00 +50 34+00 +80 35+00 +48 +78 36+15 +53 +24

East Side
℄ West Side

West Side
℄ East Side

SMITH ST.

ANITA PL.

6" Gas

70

50

SLER PL.

SLER ST.

SHARON

FAIA PL.

AVE.

INKERHOFF

SMITH

TUCKAHOE AVE.

80

140

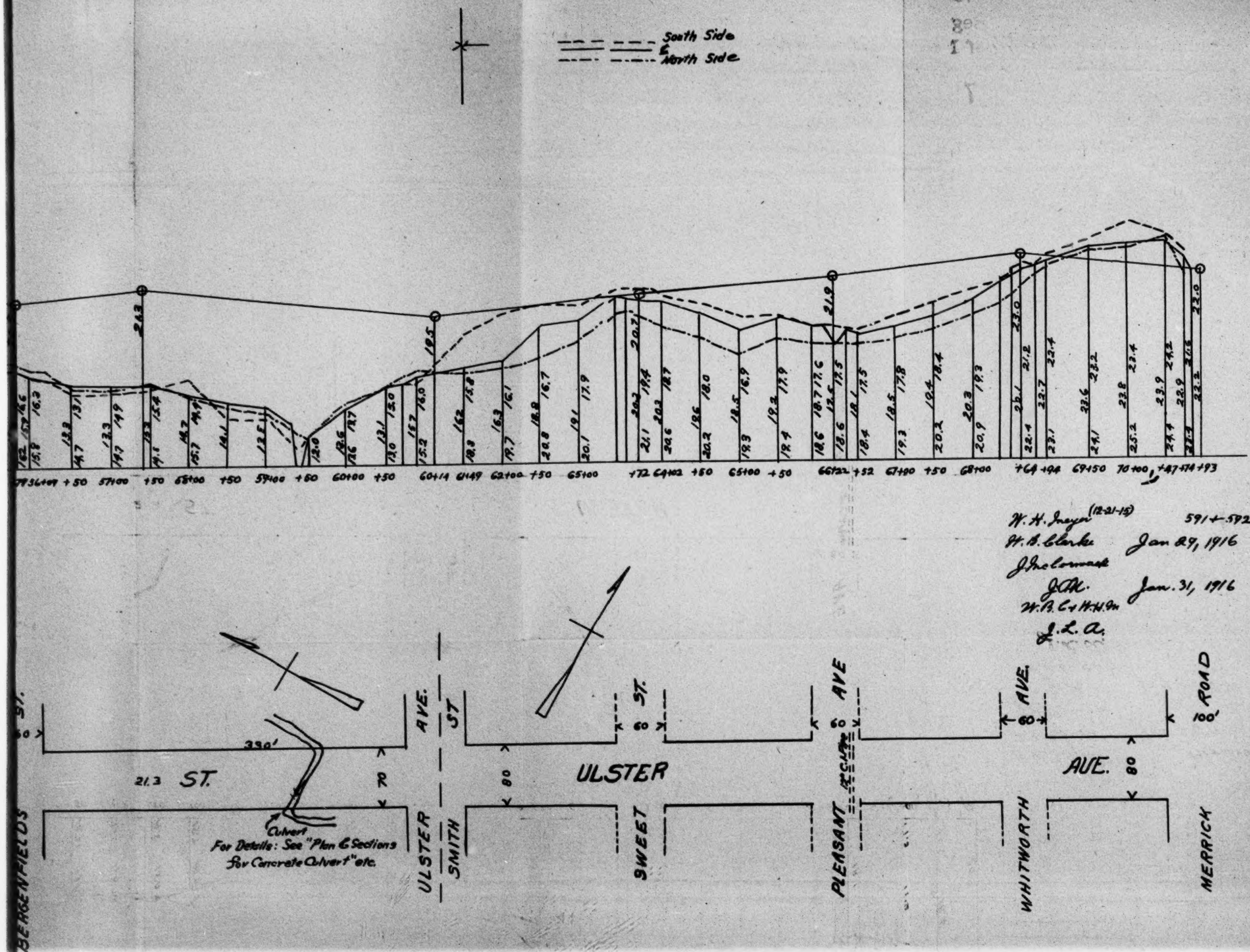
60

ST.

21.3

ST.

RGENFIELDS



City o

CITY OF NE

OFFICE OF THE PRESIDENT

BUREAU OF

PLAN AND

FOR REGULATING AND GRADING AT THE
LAMBERTVILLE AVE. (PACIFIC ST.), BETW
(VINE) ST.; SPANGLER (VINE) ST. BETWE
AND BRINKHOFF AVE.; BRINKHOFF AVE.
SMITH ST. (WOODLAND AVE); SMITH ST.
ERHOFF AVE. AND ULSTER AVE.; ULSTER
LAND AVE.) AND MERRICK ROAD, EXCEP
PARCELS AS SHOWN ON THE DAMAGE
24, 25, 33, 94, 115, 107 AND 119.

EXCEPTIO

THAT LAMBERTVILLE AVE. BETWEEN
MEDFORD (PROSPECT) ST. SHALL BE GRA
TENDING FROM THE LEGAL GRADE AT FR
EXISTING ELEVATION OF THE LONG ISL
TO THE LEGAL GRADE AT MEDFORD (

4TH WA

~ APPROXIMATE ESTIMATE OF QUANTITIES. ~

8000 CU. YDS. EARTH EXCAVATION.
10 " " ROCK "
38000 " " EMBANKMENT FURNISHED (MORE OR LESS)
126 " " CONCRETE (1:2:4) IN PLACE.

11600 POUNDS REINFORCING STEEL.
200 SQ. YDS STONE GUTTERS FURNISHED & LAID
30 " " SHEET ASPHALT PAVEMENT TO BE RESTORED (NOT TO BE BID FOR)

120 LIN. FT. 24" CAST IRON PIPE IN PLACE.
504 " " 12" " " " "

91 SQ. YDS. RIP RAP IN PLACE
3 CATCH BASINS (NEW) TEMPORARY FILE 1659 69
120 LIN. FT. 12" VITRIFIED PIPE.

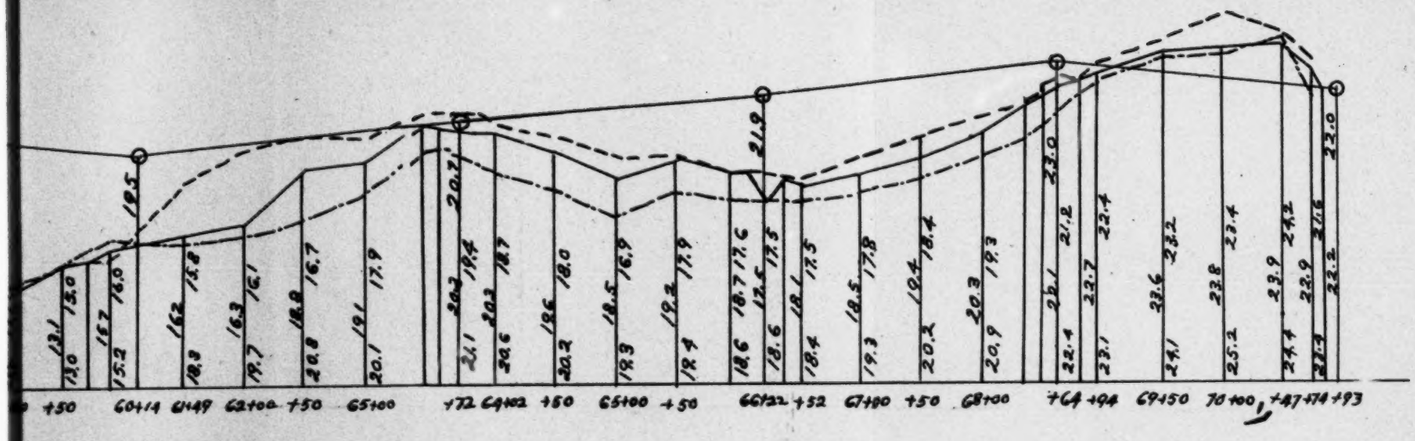
33 CU. YDS. GRAVEL OR BROKEN STONE IN PLACE.
4 TREES TO BE REMOVED & REPLACED, NOT TO BE BID FOR.

NOTE: Detailed Sections are shown on a drawing

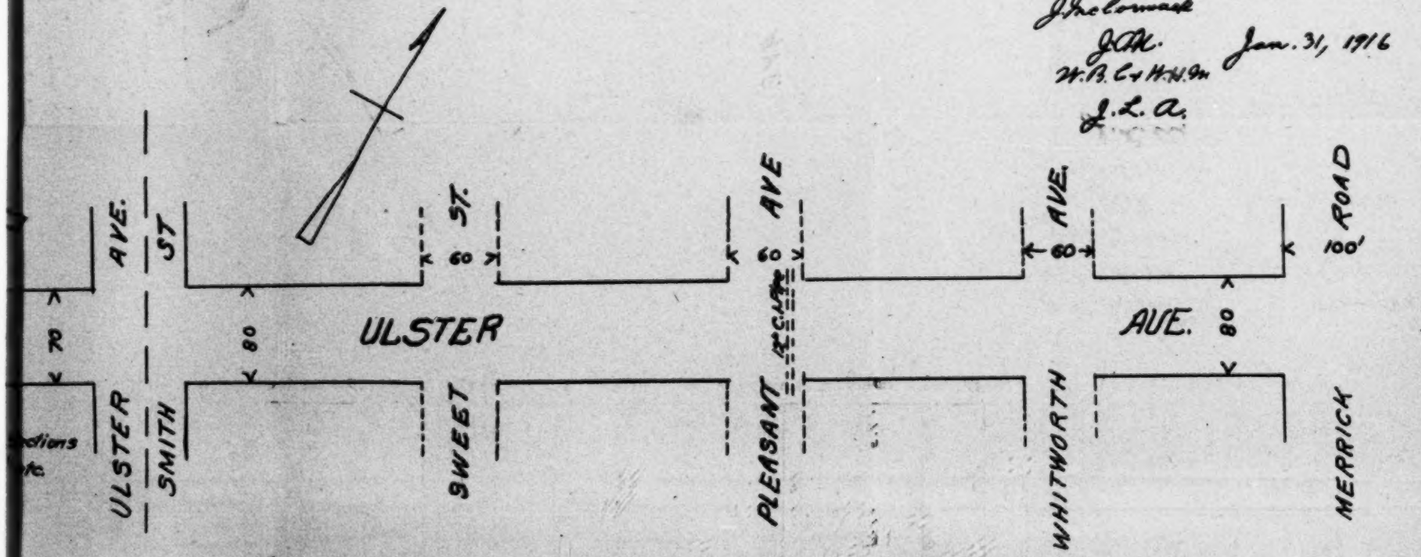
NO. 314
Begg vs.
City of New York

7

South Side
&
North Side



W. H. Ingram (12-21-15) 591 + 592
H. B. Clarke Jan 29, 1916
J. McCormack
J. A. K. Jan. 31, 1916
H. B. C. & H. H. Jr.
L. L. A.



CITY OF NEW YORK
OFFICE OF THE PRESIDENT : BOROUGH OF QUEENS.
BUREAU OF HIGHWAYS

PLAN AND PROFILE

FOR REGULATING AND GRADING AT THE LEGAL GRADE AND FULL WIDTH LAMBERTVILLE AVE. (PACIFIC ST.), BETWEEN SUTPHIN ROAD AND SPANGLER (VINE) ST.; SPANGLER (VINE) ST. BETWEEN LAMBERTVILLE AVE. (PACIFIC ST.) AND BRINKHOFF AVE.; BRINKHOFF AVE. BETWEEN SPANGLER (VINE) ST. AND SMITH ST. (WOODLAND AVE); SMITH ST. (WOODLAND AVE) BETWEEN BRINKERHOFF AVE. AND ULSTER AVE.; ULSTER AVE., BETWEEN SMITH ST. (WOODLAND AVE.) AND MERRICK ROAD, EXCEPTING THE FOLLOWING NUMBERED PARCELS AS SHOWN ON THE DAMAGE MAP OF LAMBERTVILLE AVE: NOS. 24, 25, 33, 94, 115, 107 AND 119.

EXCEPTION:

THAT LAMBERTVILLE AVE. BETWEEN FREEHOLD ST. (NORRIS AVE.) AND MEDFORD (PROSPECT) ST. SHALL BE GRADED TO A TEMPORARY GRADE EXTENDING FROM THE LEGAL GRADE AT FREEHOLD ST. (NORRIS AVE.) TO THE EXISTING ELEVATION OF THE LONG ISLAND RAILROAD TRACKS AND THENCE TO THE LEGAL GRADE AT MEDFORD (PROSPECT) ST.

4TH WARD

~ APPROXIMATE ESTIMATE OF QUANTITIES. ~

8000 CU.YDS. EARTH EXCAVATION.
10 " " ROCK
38000 " " EMBANKMENT FURNISHED (MORE OR LESS)
126 " " CONCRETE (1:2:4) IN PLACE.
11600 POUNDS REINFORCING STEEL.
200 SQ.YDS STONE GUTTERS, FURNISHED & LAID
30 " " SHEET ASPHALT PAVEMENT TO BE RESTORED (NOT TO BE BID FOR)
120 LIN.FT. 24" CAST IRON PIPE IN PLACE.
504 " " 12" " " " " "
91 SQ.YDS. RIP RAP IN PLACE
3 CATCH BASINS (NEW) TEMPORARY FILE 1659 C9
120 LIN.FT. 12" VITRIFIED PIPE.
33 CU.YDS. GRAVEL OR BROKEN STONE IN PLACE.
4 TREES TO BE REMOVED & REPLACED, NOT TO BE BID FOR.

Asst. Engineer.
Eng. of Highways
James Rice Eng. in Charge, Eng. Const.

Dated. Feb. 21, 1916.

Scale { Hor 1"=80'
Vert. 1"=4'

Draft Damage Map

in the matter of acquiring title to

ULSTER AVENUE 1296D

Extending from SMITH STREET to WESTCHESTER AVENUE

WESTCHESTER AVENUE 1301D

Extending from ULSTER AVENUE to 117TH AVENUE

117TH AVENUE 1302D

Extending from WESTCHESTER AVENUE to DEARBORN AVENUE

AND

DEARBORN AVENUE 1303D

Extending from 117TH AVENUE to THE CITY LINE

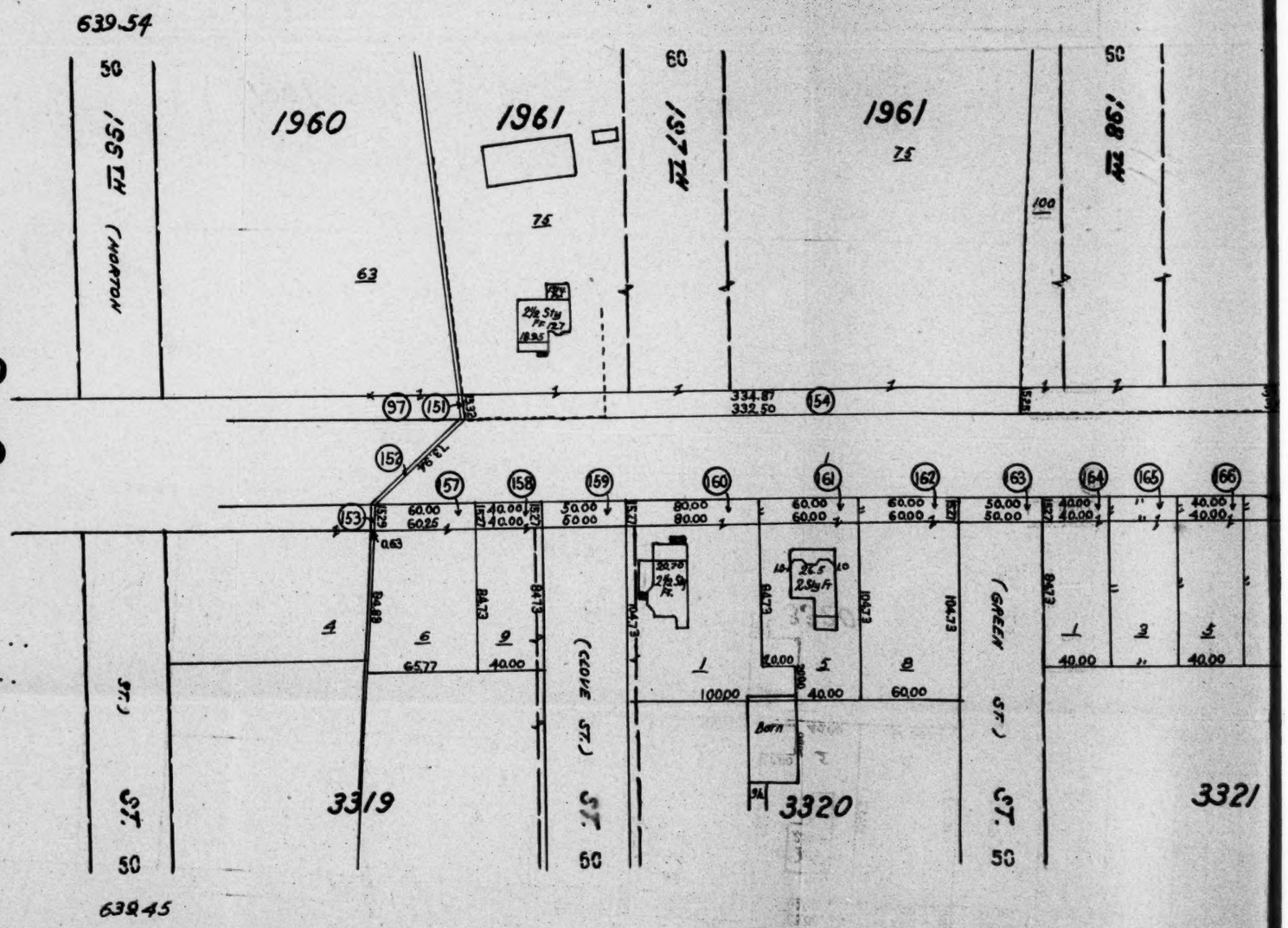
IN FOUR SECTIONS

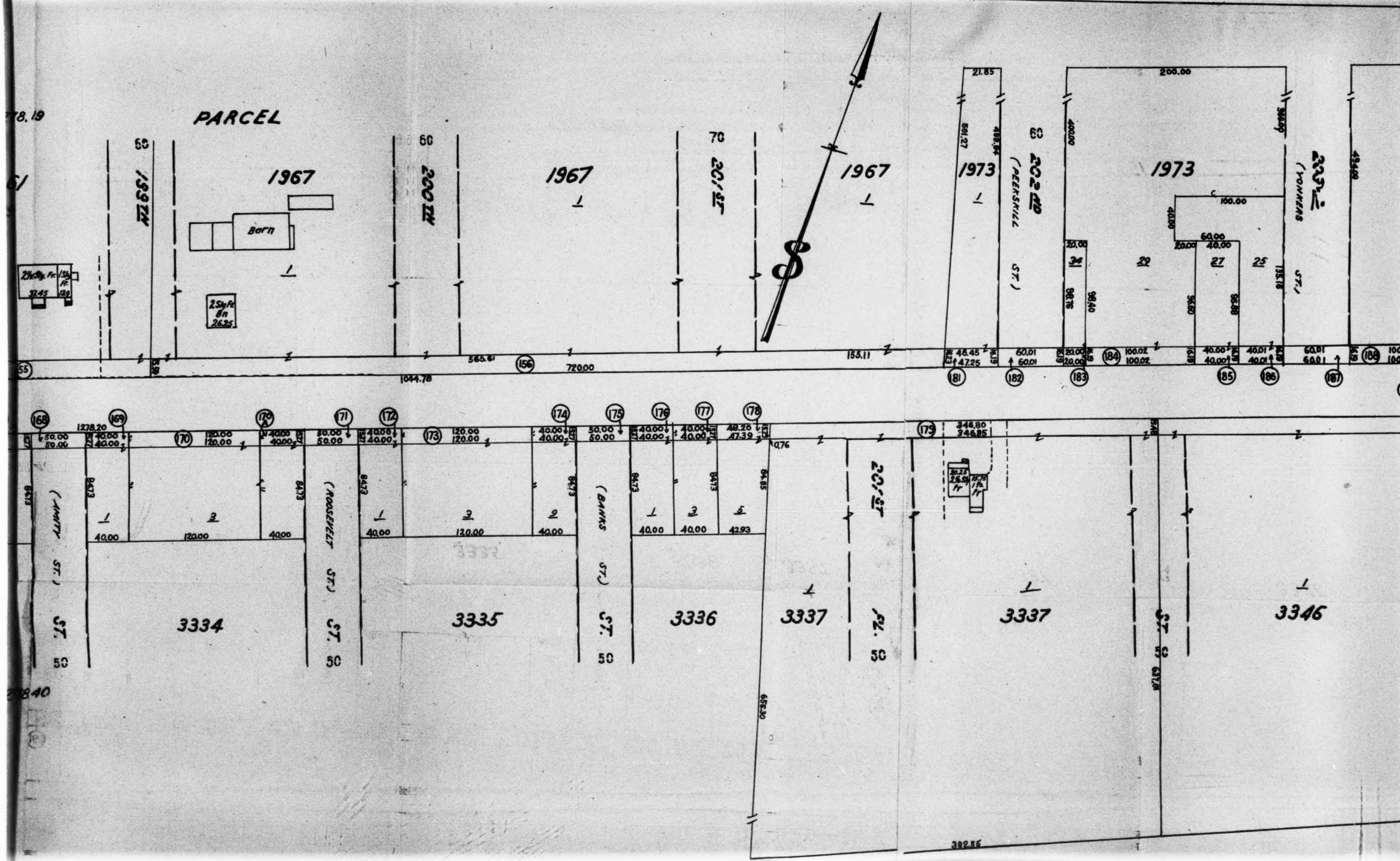
SECTION 3

Approved by the Board of Estimate and Apportionment on .....

.....

Secretary.




PARCEL
1967
1967
1967
1973
1973
199TH
200TH
201ST
202ND
(PEEKSKILL ST.)
203RD
(YONKERS ST.)
Barn
(AMITY ST.)
(ROOSEVELT ST.)
(BANKS ST.)
201ST PL.
3334
3335
3336
3337
3337
3346
1044.78
720.00
565.61
155.11
200.00
100.00
346.80
346.85
382.55
1278.20

AVENUE

"B"

ROSEDALE

1711.58

1711.53

1974 1975 1975 1975

3346 3346 3346 3346 3358 3358

(YONKERS ST.)

(TARRYTOWN RD.)

200.00 100.00 100.00 51.69 60 50 100

45.09 58.39 58.39 50.50 45.42 58.42

60.01 60.01 100.02 100.02 100.01 100.01 60.01 60.01 27.34 26.53 902.58 862.27 1516.14 1152.05 805.25 804.44 502.26 545.22 661.75 112.42 1.57 R=291.68

186 187 188 189 190 191 192 193 194 194-A

RIGHT OF WAY

ENUE

NO.314
Begg vs.
City of New York

9

"B"

R-371.68 L-190.42

DEARBORN AVE.

117TH AVE.

118TH & AVE.

SPRINGFIELD (SPRINGFIELD)

ROCKDALE

RIGHT OF WAY

1975

1985

3358

3346

100

60

313.52

362.27

307.58

145.20

132.28

149.44

304.42

363.99

283.72

379.30

310.10

3643.99

3625.02

R=291.68 L=149.44

Draft Damage Map

·in·the·matter·of·acquiring·title·to·

ULSTER AVENUE 1296D

Extending from SMITH STREET to WESTCHESTER AVENUE

WESTCHESTER AVENUE 1301D

Extending from ULSTER AVENUE to 117TH AVENUE

117 TH AVENUE 1302D

Extending from WESTCHESTER AVENUE to DEARBORN AVENUE

AND

DEARBORN AVENUE 1303D

Extending from 117TH AVENUE to THE CITY LINE

IN FOUR SECTIONS

SECTION 2

Approved by the Board of Estimate and Apportionment on . . . . . .

. . . . . .

Secretary.

WESTCHESTER AVENUE

PARCEL "B"

1329

1331

1331

60 NEW BURG (FRANKLIN) ST. (NEW)

60 MEXICO (VIOLANTE) ST. (NEW)

1025.00

928.54

896.13

141-416

141-417

L-10062 R-2884.40 MONTAUK DIVISION

LIRR

3168

MONTAUK AVE.

LOVINGHAM PL.

EVERITT (EVERITT AVE.)

986.05

UE

"B"

117TH

PARCEL

1331

80 FARMERS

1382.47

1955

1956

80 ISLETTA (ELLISWORTH)

50 131ST (EWARTS 57TH)

1404.19

3169

AVE.

PL.

80

3301

330

138247

639.54

1957

1957

1957

1960

1960

192 ND (QUEENS)

193 RD (QUEEN)

194 TH (CHAPMAN) ST.

195 TH (JEM)

196 TH (MARION)

ST.

50

60

3309

3317

3318

1404.19

639.45

A

NO.314
Begg vs.
City of New York
10

AVENUE "B"

639.54

1278.19

1957 | 1960 | 1960 | 1960 | 1961

194TH (CHAPMAN) ST. | 195TH (JEM) ST. | 196TH (MORGAN) ST. | 197TH ST.

3317 | 3318 | 3319

ST. 50 | ST. 50 | (CLOVE) ST. 60

639.45

1278.40

Draft Damage Map

in the matter of acquiring title to

ULSTER AVENUE 1296D

Extending from SMITH STREET to WESTCHESTER AVENUE

WESTCHESTER AVENUE 1301D

Extending from ULSTER AVENUE to 117TH AVENUE

117 TH AVENUE 1302D

Extending from WESTCHESTER AVENUE to DEARBORN AVENUE

AND

DEARBORN AVENUE 1303D

Extending from 117TH AVENUE to THE CITY LINE

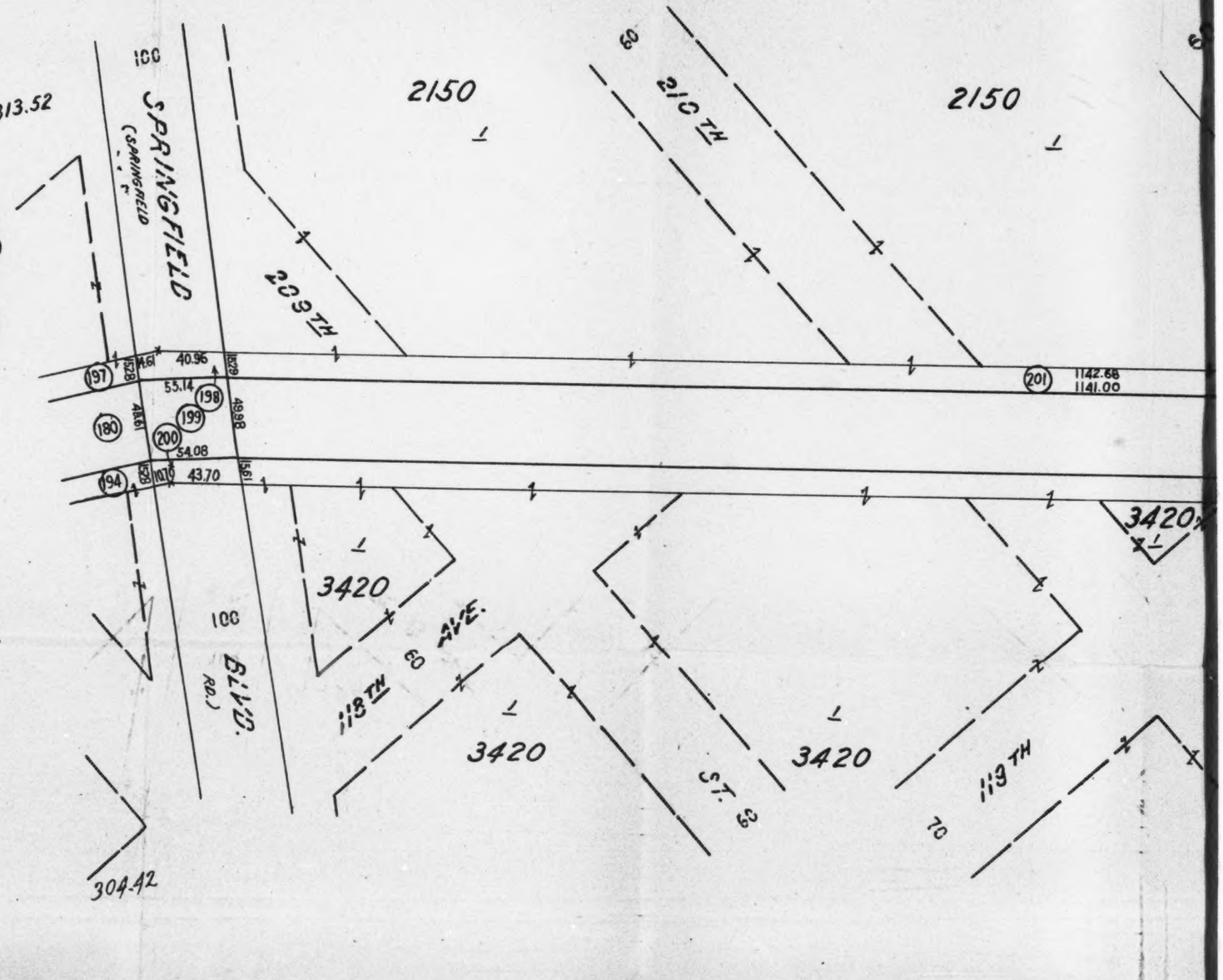
IN FOUR SECTIONS

SECTION 4

Approved by the Board of Estimate and Apportionment on .....

.....

Secretary.



DEARBORN

PARCEL

2150 1 | 60 210TH | 2150 1 | 60 211TH | 2150 1 | AVE. 16 | 60 212TH | 2150 1 | 2157 1

203RD 1

201 1142.68 1141.00

0.96 | 529 | 498.98 | 198 | 99 | 0.08 | 437.0 | 196

204 1744.41 1741.59

3420 1 | 3420 1 | 3420 1 | 3420 1 | 3420 1

100 GRAND RD.

113TH 60 AVE.

3420 1 | ST. 63 | 3420 1 | 113TH 70 | ST. 63 | 3420 1 | ST. 63 | 3420 1

3643.99

2157

1

80

214 TH

2157

1

70

70

60

AVE.

KENNILWORTH

2157

1

215TH

2157

1

2165

1

60

218 TH

Sh.

Bn.

Bn.

Bn.

Bn.

2165

Bn.

15.5

202

1136.75

1136.81

15.5

3601.25

203

205

825±

825±

3587.96

3435

1

3420

1

3420

1

3420

1

3420

120 TH

80

80

ST.

80

3625.02

1

3430

AVE.

70

1

3430

ST.

80

1

3430

22.45

20.0

2½ Sty Fr.

1

3430

Bn.

Bn.

S.T.

55

70

121 ST

2165
AVE. 70
2165
1
220TH ST.
2165
1
221ST ST.
2165
1
2185
1
AVE. 70
222ND ST.
2185
1
207
1315.45
1315.48
206
1018.33±
1014.73±
5.65
3440
1
3435
1
3435
1
3435
1
3440
1
84722 84
852.87

NO. 314
Begg vs.
City of New Yo

AVENUE "B"

225TH ST.

AVE. 80

HOOK CREEK

NEW YORK CITY

224TH ST.

223RD ST.

123RD ST.

845.26

790.93

807.48

857.72

842.38

830.48

250.45±

282±

318.05

321.95

827.93

82.34

2185

3440

3445

203 208 209 210 211 212

2½ Sty Fr.

Barn

NO. 314
Begg vs.
City of New York

AVENUE "B"

225TH ST.

224TH

AVE. 88

HOCK CREEK

NEW YORK CITY

NASSAU COUNTY

80

2185 / 1

790.93

2185

2185 / 1

2185 / 1

82.34

790.93
807.48

830.48

250.45±
252±

318.05
321.93

40.38
2½ Sty Fr.

Barn

Barn

3445

3445

3440

3440

3445

827.93

R.L.W.D.

123RD

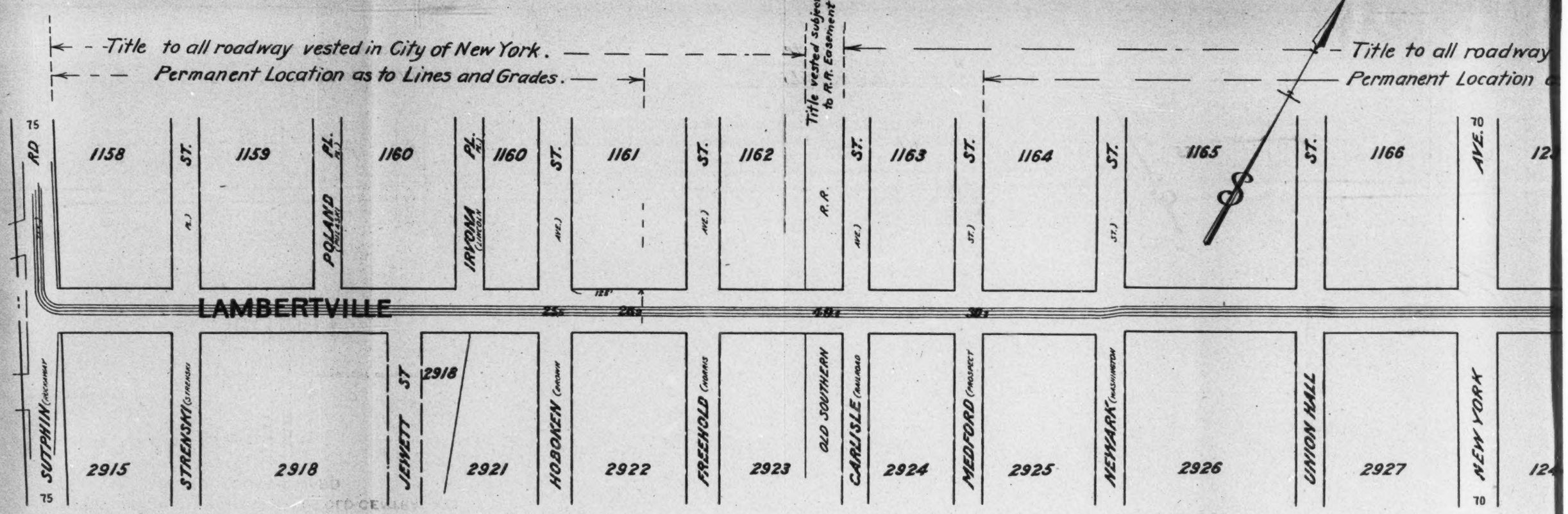
208

209

210

211

212



CITY OF NEW YORK, BOROUGH OF QUEENS
OFFICE OF THE PRESIDENT
TOPOGRAPHICAL BUREAU

MAP

SHOWING

PROPOSED LOCATION OF THE TRACKS

OF THE

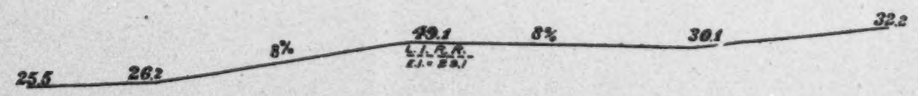
MANHATTAN & QUEENS TRACTION CO.

ON LAMBERTVILLE AVE., SPANGLER ST., BRINKERHOFF AVE., SMITH ST., ULSTER AVE., WESTCHESTER AVE., 117TH AVE. AND DEARBORN AVE.
AND THEIR RELATION TO THE POLES AND PAVEMENT IN THAT PORTION LYING WITHIN THE LINES OF OLD CENTRAL AVE.
IN THE FOURTH WARD

NEW YORK, MARCH 26TH 1918

Charles M. Powell
ENGINEER IN CHARGE

PRESIDENT OF THE BOROUGH



PROFILE OF PROPOSED TEMPORARY
CROSSING OF OLD SOUTHERN R.R.

NO.814
Begg vs.
City of New York
12

Title to all roadway vested in City of New York.
Permanent Location as to Lines and Grades.

1165 | ST. | 1166 | AVE. 70 | 1237 | AVE. | 1238 | ST. | 1239 | 1240 | SPANGLER ST. | 1251 | 50 AVE. | 1256 | RD.

2926 | UNION HALL | 2927 | NEW YORK | 70 | 1244 | GLOBE | 1245 | BELLEVILLE BROOKLYN | 1246

AVE.

SPANGLER ST. (PINE) | 70 | 1252 | PLEASANT | 50 | 1257 | MERRICK MERRICK

CITY OF NEW YORK, BOROUGH OF QUEENS

OFFICE OF THE PRESIDENT

TOPOGRAPHICAL BUREAU

MAP

SHOWING

PROPOSED LOCATION OF THE TRACKS

OF THE

MANHATTAN & QUEENS TRACTION CO.

ON LAMBERTVILLE AVE., SPANGLER ST., BRINKERHOFF AVE., SMITH ST., ULSTER AVE., WESTCHESTER AVE., 117 TH AVE. AND DEARBORN AVE.

AND THEIR RELATION TO THE POLES AND PAVEMENT IN THAT PORTION LYING WITHIN THE LINES OF OLD CENTRAL AVE.

IN THE FOURTH WARD

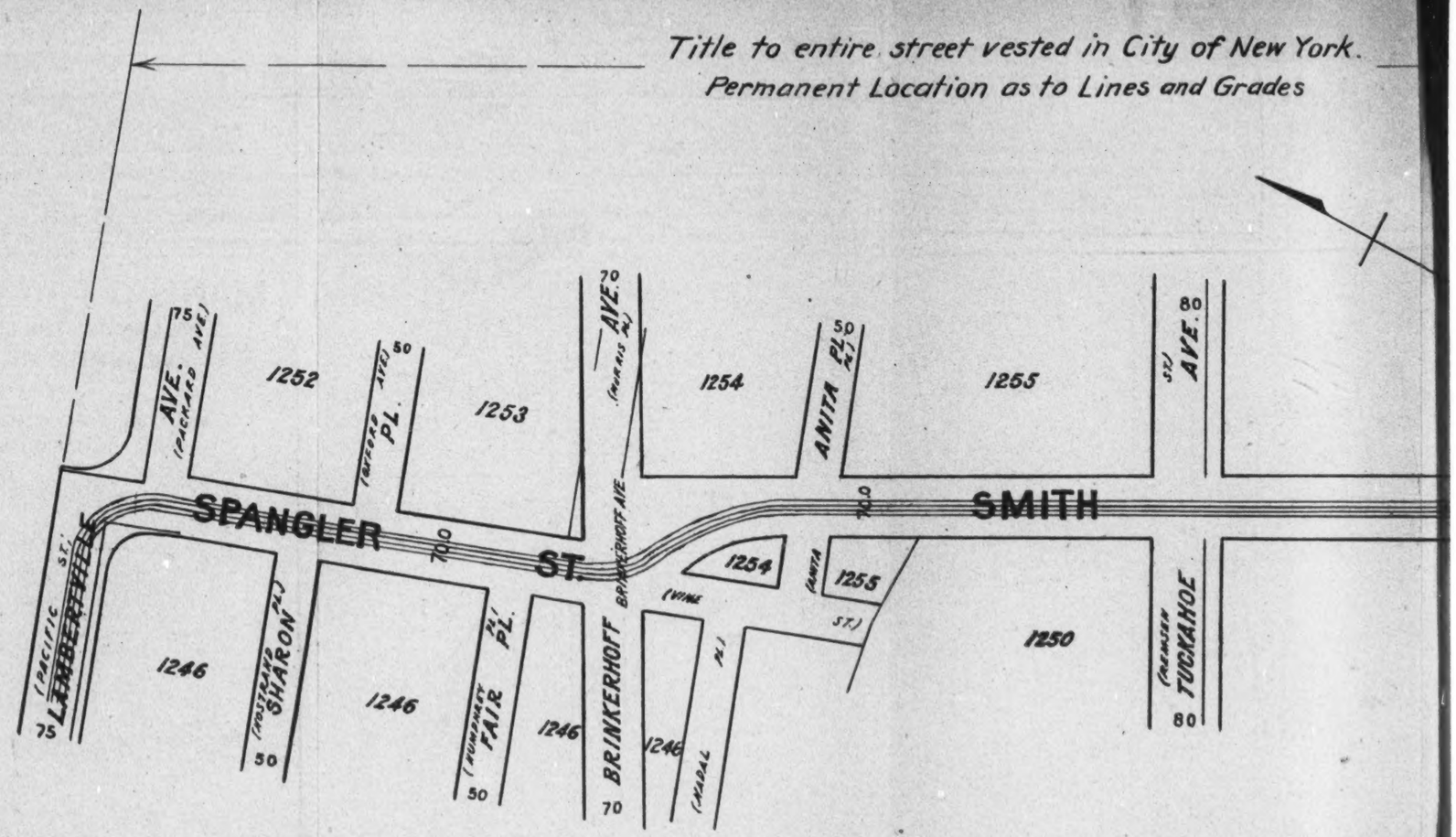
NEW YORK, MARCH 26 TH 1918

Charles W Donald

ENGINEER IN CHARGE

PRESIDENT OF THE BOROUGH

Section 2



Title to entire street vested in City of New York.
Permanent Location as to Lines and Grades

NO. 814 13
Begg vs.
City of New York

SPANGLER ST. 70 | SMITH ST 70 | HESTER AVE. 80 | ULSTER AVE. 80

AVE. (RACHARD AVE) 75 | 1252 | TAYLOR PL. 50 | 1253 | AVE. (MORRIS PL.) 70 | 1254 | ANITA PL. 50 | 1255 | 5TH AVE. 80 | 1266 | 5TH ST. 60 | 3086 | 3087

1246 | (HASTINGS) SHARON PL. 50 | 1246 | (THURMAN) FAIR PL. 50 | 1246 | BRINKERHOFF AVE. 70 | 1246 | (VINE PL.) | 1254 | (ANITA) 1255 | 5TH ST.) | 1250 | (REMSEN) TUCKAHOE 80 | 1265 | (AISLEY) BERGENFIELDS 60 | 3086 | 3087

Title to old Central Ave

Title to entire street vested in New York City

Permanent Location as to Lines and Grades

60

3086

3087

SWEET

PLEASANT

WHITWORTH

3090

MERRICK

A

1293

POTTSDAM

OAKWOOD

MALONE

ULSTER

PARKWAY

AVE.

WOODRICK

FERN AVE.

1320

WATSON AVE.

1321

GORDON

1322

B

RUTLAND

ST.

HERKIMER

1326

GLENHAM

CARLTON

GAXTON

1327

1328

WESTCHESTER

AVE.

3104

3109

RICHVILLE ST.

PARISH ST.

3112

UNDERCLIFFE AVE.

MINEVILLE ST.

3145

WILKESBARRE AVE.

RD.

ST.

AVE.

Track

ENLARGED PLAN ON LINE A-A

ENLARGED PLAN ON LINE B-B

ENLARGED PLAN ON LINE C-C

CITY OF NEW YORK, BOROUGH OF QUEENS
OFFICE OF THE PRESIDENT
TOPOGRAPHICAL BUREAU

MAP

SHOWING

PROPOSED LOCATION OF THE TRACKS

OF THE

MANHATTAN & QUEENS TRACTION CO.

ON LAMBERTVILLE AVE., SPANGLER ST., BRINKERHOFF AVE., SMITH ST., ULSTER AVE., WESTCHESTER AVE., 117TH AVE. AND DEARBORN AVE.
AND THEIR RELATION TO THE POLES AND PAVEMENT IN THAT PORTION LYING WITHIN THE LINES OF OLD CENTRAL AVE.
IN THE FOURTH WARD

NEW YORK, MARCH 26TH 1918

ENGINEER IN CHARGE

PRESIDENT OF THE BOROUGH

Avenue [illegible] vested in New York City

City

STREET LINES SHOWN BY HEAVY BLACK LINES
TROLLEY TRACKS " " LIGHT " "
POLES SHOWN THUS o
PAVEMENT SHOWN IN BLUE

ENLARGED PLAN ON LINE F-F

14

NO.814

Begg vs.

City of New York